



# Federal Register

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# Presidential Documents

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Title 3—

Memorandum of February 12, 2003

The President

## Designation of Officers of the Department of Veterans Affairs To Act as Secretary of Veterans Affairs

### Memorandum for the Secretary of Veterans Affairs

By the authority vested in me as President under the Constitution and laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, I hereby order that:

#### **Section 1.** *Order of Succession.*

During any period when the Secretary of Veterans Affairs (Secretary), the Deputy Secretary of Veterans Affairs (Deputy Secretary), and the officers designated by Executive Order 13247 of December 18, 2001, to perform the functions and duties of the office of Secretary have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, the following officers of the Department of Veterans Affairs, in the order listed, shall perform the functions and duties of the office of Secretary, if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Secretary:

Veterans Integrated Service Network (VISN) 8 Director, Veterans Health Administration;

VISN 7 Director, Veterans Health Administration;

Veterans Benefits Administration Southern Area Director; and

North Florida/South Georgia Healthcare System Director.

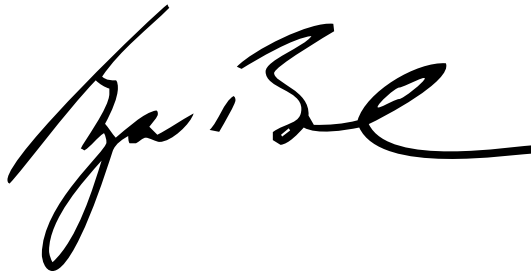
#### **Sec. 2.** *Exceptions.*

- (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this memorandum.
- (b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this memorandum in designating an acting Secretary.



**Sec. 3. *Publication.***

You are authorized and directed to publish this memorandum in the **Federal Register**.

A handwritten signature in black ink, appearing to read "G. W. Bush", is centered on the page.

THE WHITE HOUSE,  
*Washington, February 12, 2003.*

[FR Doc. 03-5196

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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 235

[INS No. 2256-03]

RIN 1115-AG94

#### Automated Inspection Services— Extension of Enrollment Period

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** Automated Inspection Services (AIS) programs, such as the INS Passenger Accelerated Service System (INSPASS) and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), are automated systems designed to identify pre-registered, low-risk travelers and permit them to enter the United States within a predictable wait time by reducing the interaction of the traveler with the inspector at the time of entry. The extension of the enrollment period for AIS programs will benefit both the Immigration and Naturalization Service (Service), and the applicants of the INSPASS and SENTRI programs.

The Service regulations currently limit the period of approval to the program to 1 year, thereby requiring applicants to resubmit a new application and fee each year. This is a very burdensome process for both the traveling public and the Federal agencies administering the programs. This rule amends the Service's regulations to extend the current enrollment period for the AIS programs from 1 year to 2 years. The Service has determined that it can effectively maintain the integrity of the program and the security of the border without requiring applicants to undergo an annual application renewal.

**DATES:** *Effective date:* This interim rule is effective February 28, 2003.

*Comment date:* Written comments must be submitted on or before April 29, 2003.

**ADDRESSES:** Please submit written comments, to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling please reference INS number 2256-03 on your correspondence. You may also submit comments electronically to the Service at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically, you must include INS number 2256-03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Campbell, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 305-9246.

#### SUPPLEMENTARY INFORMATION:

##### What Is an Automated Inspection Service (AIS)?

The AIS, also known as PORTPASS programs, are automated systems designed to identify pre-registered, low-risk travelers using various technologies, and permit them to enter the United States within a predictable wait time by reducing the interaction of the traveler with the inspector at the time of entry. The Service currently operates several AIS systems, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) dedicated commuter lanes along the southern border, and Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS), at several airport locations. The AIS programs incorporate a pre-registration of participants that includes an interview, various agency law enforcement database and criminal record checks, capturing of biometrics, and inspection of the vehicle, if appropriate. Upon entry to the United States, the traveler is identified using various technologies, such as transponders, proximity cards, or other means of biometric verification. In dedicated commuter lanes, the

participant's photograph and other information displays on the screen to the inspector in designated vehicle lanes, who can verify the identity of the traveler. For INSPASS, travelers approach a kiosk and submit to a biometric (hand geometry) verification and database check upon entry. These programs benefit both the traveling public and the government by providing advance information about persons entering the United States, thereby allowing minimal inspection of low-risk, known travelers, while permitting border inspectors to focus attention and resources on unknown, or higher-risk travelers.

##### What is INSPASS?

- INSPASS is an AIS Program currently operational at international airports at: Los Angeles, Miami, Newark, New York (JFK), San Francisco, Washington-Dulles, and the U.S. preclearance sites at Vancouver, and Toronto in Canada. Citizens of the United States, Canada, Bermuda, and Visa Waiver Pilot Program (VWPP) countries who travel to the U.S. on business three or more times a year, or who are diplomats, representatives of international organizations, or airline crews from the VWPP nations may voluntarily enroll in the INSPASS Program.

- Enrollment into INSPASS is not available to anyone with a criminal record or to aliens who require a waiver of inadmissibility to enter the U.S.

- Arriving at a Port-of-Entry, the traveler proceeds to an INSPASS inspection queue. There, the person inserts a card issued to them at enrollment to an INSPASS kiosk, similar to automated bank teller devices. Responding to messages on the kiosk's touch-screen display, the traveler is prompted to enter their flight number and to place their hand in a hand geometry reader. Screen prompts are used to achieve correct alignment of the hand, with the hand reader. The kiosk software automatically compares the live scan of the traveler's hand geometry biometric to the image captured at enrollment. If the traveler's identity is validated by this comparison, an I-94 (if required) or receipt of his inspection is printed by the Kiosk that directs the traveler to proceed to U.S. Customs Inspection. If this check is not successful, a screen Message refers the

traveler to an Immigration Inspector in a nearby inspection booth.

#### **What is SENTRI?**

- SENTRI is an AIS Program that enables enrolled travelers to rapidly enter the United States through a dedicated commuter lane (DCL) at specific Land Border Ports-of-Entry.

- To be eligible to use SENTRI, you must be able to lawfully enter the United States and pass a three-part comprehensive background check. These record checks are conducted for all applicants (18 years of age and older) by the U.S. Immigration and Naturalization Service, U.S. Customs Service, and Federal Bureau of Investigation.

- When an enrolled automobile approaches the inspection booth in the SENTRI lane, a radio frequency transponder that is affixed to the automobile emits radio signals that are picked up by receivers located at the port of entry. Each transponder has a unique number that retrieves a specific record in the SENTRI enrollment database. Within moments, this record, which contains a photograph and detailed information about the vehicle and its occupants, appears on a color monitor screen in front of the inspector. Next, each auto occupant swipes an identification card through a magnetic reader located at the inspection booth, (a process similar to using an ATM card). The inspector verifies that the vehicle's occupants are enrolled in the SENTRI system and authorizes the vehicle and its occupants to enter the United States. As at other ports of entry, the inspector may refer vehicles for a more thorough inspection. In addition, a small percentage of travelers are randomly chosen by computer and referred for a secondary inspection to ensure compliance with the rules and regulations of the SENTRI system.

#### **Are Security Checks Conducted in the AIS Programs?**

Yes. The Service requires that all AIS Programs perform various agency law enforcement database and criminal record checks. AIS travelers may also undergo additional random referrals and compliance checks to ensure that the participants remain in compliance with the program guidelines and the laws and regulations that govern entry into the United States.

#### **How Does This Rule Amend the Regulations?**

This rule extends the period of enrollment in the AIS programs from 1 year to 2 years. This change will significantly reduce the paperwork

burden on the general public and the inspection services while causing no reduction in the security of the automated inspection systems or the international border. The Service will continue to perform regular queries of the law enforcement databases on the enrolled travelers as well as requesting updates of information from enrolled travelers through periodic mailings. The Service will also continue to perform regular queries of the law enforcement databases on the enrolled travelers, as well as requesting updates of information from enrolled travelers through periodic mailings, if necessary. The Service will also continue to conduct random referrals and compliance checks to ensure that participants remain in compliance with the programs guidelines and the laws and regulations that govern entry into the United States.

#### **Why Is the Service Changing the Length of the Enrollment Period?**

With the growing popularity of the AIS programs particularly along the southern border, the large number of applicants has placed a strain on the ability of the enrollment centers to process all applications in a timely manner, resulting in extensive backlogs of applicants waiting to be processed. The annual renewal requirement further exacerbates this workload. Because the data provided at the time of enrollment by the traveler typically remains the same from year to year, the Service has determined that it does not require the re-submission of this data on an annual basis. However, the Service will continue to evaluate this and other aspects of the AIS programs to determine whether additional changes should be made at a later date.

#### **How Will the Service Measure Its Performance on Enrollments?**

An extension of the enrollment from 1 year to 2 years would aid the Service in its goal to reduce the enrollment backlog to 60 days by July 1, 2003. Thousands of applicants each year will no longer be required to visit the enrollment center, re-enroll or pay an additional application fee. By eliminating an extra enrollment fee, a reduction in cost for program participation is returned to the traveler. Fewer visitors to the enrollment centers decrease the strenuous workload for the Service. Attention could then be focused on the reduction of the thousands of applicants backlogged instead of processing yearly re-applications.

#### **If I am Already Enrolled in an AIS Program, Will My Enrollment Period Be Automatically Extended to 2 Years?**

Yes, the Service will consider your enrollment period to be valid 2 years from the date of your last enrollment approval. You will not have to pay an additional enrollment fee for the extension.

#### **What if My Visa or Immigration Status Is Valid for Less Than 2 Years When I Submit my Application?**

The actual authorization of any AIS participation is determined by the individual's underlying immigration status. The individual's immigration status must be valid at all times to participate in the program and they must be in possession of all appropriate immigration and identity documents at the time of each entry. The initial period of approval will be limited in accordance with the underlying immigration status, but can be extended, without application or fee, for the full 2-year period once the participant establishes the appropriate visa or immigration status validity.

#### **Has the Service Consulted With Other Entities in Developing This New Rule?**

The Service has consulted with numerous stakeholders and received positive feedback on this change from all entities. These stakeholders include the Border Trade Alliances, individual travelers, business and trade associations, congressional officials, and the other federal inspection service agencies involved in the affected programs.

#### **Good Cause Exception**

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(1). The reason for immediate implementation is as follows: This rule is intended to benefit both the traveling public and the Service by decreasing the workload at the enrollment centers and alleviating the backlog of pending applications. In addition, this rule relieves the burden on the program participant of having to file an application annually and will also reduce the cost to the participant since the participant will not have to pay the additional enrollment fee for the second year. As previously stated, having as much advance information about as many travelers to the United States as possible promotes greater security of the border and the United States. In addition, since the events of September 11, 2001, ports-of-entry have operated

under a higher threat level. This has often resulted in a dramatic increase in the time persons must wait to enter the United States at a land port-of-entry. The increased wait times result in increased release of emissions from vehicles into the communities surrounding the ports and impact the economy as the amount of trade and travel between the United States and its neighbors is decreased. The heightened security measures have required the inspection services to stretch scarce resources. AIS programs alleviate these harms by allowing quicker passage through the port and by allowing the government to focus inspection resources on higher risk travelers. Accordingly, the Service finds that it is impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553. This rule will be effective immediately upon publication under 5 U.S.C. 553(d)(1) because the rule relieves the burden on the program participant of having to file an application and pay a fee on a yearly basis. This benefits both the traveling public and the government by decreasing the workload at the enrollment center and alleviating the backlog of pending applications. In addition the good cause exception at 5 U.S.C. 553(d)(3) also permits the rule to become effective immediately for the reasons stated above.

#### **Regulatory Flexibility Act**

Although some of the enrollees in the AIS programs may be considered small entities, the majority of the travelers participating in the AIS programs are individuals who cross the border frequently for a variety of reasons, both business and personal. The intent of this rule is to reduce the burden on all of the participants in the AIS programs by eliminating the requirement of having to file an application annually and by reducing the cost to the participant. Accordingly, the Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one-year, and it will not significantly or uniquely affect small

governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

The Service has assessed both the costs and benefits of this rule required by section 1(b)(6) of Executive Order 12866 and has made a reasonable determination that as previously stated in the "Good Cause Exception" that the intent of this rule is to reduce the burden on all of the participants in the AIS programs by eliminating the requirement of having to file an application annually and by reducing the cost to the participant. This will also reduce the strenuous workload of the Service in having to re-enroll thousands of applicants each year.

#### **Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **Executive Order 12988 Civil Justice Reform**

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Paperwork Reduction Act**

The Form I-823, Application—Alternative Inspection Services, is used for enrolling applicants in the AIS programs. This form has previously been approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115-0174.

#### **List of Subjects in 8 CFR Part 235**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

#### **PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

1. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

#### **§ 235.7 [Amended]**

2. Section 235.7(a)(4)(xi) is amended in the first sentence by revising the phrase "1 year" to read: "2 years".

Dated: January 29, 2003.

**Michael J. Garcia,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 03-5189 Filed 2-28-03; 3:03 pm]

**BILLING CODE 4410-10-P**

### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Chapter I**

[Docket No. FAA-2003-14578]

#### **Aviation Safety and Health Partnership Program**

**AGENCY:** Federal Aviation Administration

**ACTION:** Notice of program establishment and request for comments.

**SUMMARY:** By this notice, the Federal Aviation Administration (FAA) announces the creation of the air carrier Aviation Safety and Health Partnership Program (ASHPP). The FAA intends to enter into partnership agreements with participating air carriers, which will provide, at minimum, air carrier employee injury and illness data to the FAA for collection and analysis. The FAA will establish an Aviation Safety and Health Program (ASHP) Aviation Rulemaking Committee to provide advice and recommendations to:

a. Develop the scope and core elements of the partnership program agreement,

b. Review and analyze the employee injury and illness data,

c. Identify the scope and extent of systematic employee injury and illness trends,

d. Make recommendations to the FAA concerning remedies that uses all current FAA protocols, including rulemaking activities if warranted, to abate employee hazards, and

e. Any other advisory and oversight functions deemed necessary by the FAA.

The FAA invites air carriers interested in entering into an ASHPP to respond in accordance with this notice.

Additionally, the FAA invites persons interested in serving on the ASHP Aviation Rulemaking Committee to request membership in accordance with this notice. The FAA will select members to provide a balance of viewpoints, interests, and expertise. Membership on the committee may be limited to facilitate discussions and maintain a balance of interests. This program preserves FAA's complete and exclusive responsibility for determining whether proposed abatements of safety and health hazards would compromise or negatively affect aviation safety.

**DATES: Membership:** Air carriers interested in participating in the voluntary ASHPP with the FAA should submit their intentions and the name and contact information of their representative before March 31, 2003. Air carriers belonging to a trade organization may elect to be represented by that organization. Air carrier trade associations, air carrier employee unions and other persons interested in participating on the ASHP Aviation Rulemaking Committee should submit their request on or before March 31, 2003. Selected committee members will be advised, in writing, of their participation and first meeting details.

**Comments:** The FAA will consider all comments on this ASHP Aviation Rulemaking Committee filed on or before May 30, 2003. We will consider comments filed late if it is possible to do so without incurring expense or delay.

**ADDRESSES: Membership:** People that request membership or participation in the ASHP Aviation Rulemaking Committee should contact the person listed below under **FOR FURTHER INFORMATION CONTACT**.

**Comments:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify docket number FAA-2003-14578 at the beginning of your

comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

You may also submit comments through the Internet at <http://dms.dot.gov>. You may review the public docket containing comments to the ASHP Aviation Rulemaking Committee, in person, in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review comments made to this public docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Gene Kirkendall, AFS-200W, rm. 831, 800 Independence Ave., SW., Washington, DC 20591, (202) 267-7074, facsimile at (202) 267-5229, or by email: [Gene.Kirkendall@FAA.GOV](mailto:Gene.Kirkendall@FAA.GOV)

**SUPPLEMENTARY INFORMATION:**

**Background**

The joint FAA and Occupational Safety and Health Administration (OSHA) Aviation Safety and Health Team (ASHT) was established by a Memorandum of Understanding (MOU) between the two agencies in August 2000. The MOU directed the team to determine whether certain OSHA requirements could be applied to the working conditions of employees on aircraft in operation (other than flightdeck crew) without compromising aviation safety. The ASHT produced a report that outlined several legal, enforcement, compliance, and aviation safety issues that prevented the team from recommending jurisdiction over the working environment of employees on aircraft in operation be granted or ceded to OSHA. The team also identified a lack of reliable empirical data concerning injury and illness hazards on aircraft in operation necessary to justify any rulemaking activities at that time. The ASHT recognized that the overall safety of air carrier operations dictates that the FAA play an active role in the application of any safety and health standards and recommended abatements if they were to be applied to the working conditions of employees on aircraft in operation. The team developed an action plan that created the FAA ASHP and proposed that air carriers voluntarily enter into an ASHPP with the FAA. These documents and other ASHP information may be

obtained on the FAA, ASHP Web site at [www.faa.gov/avr/afs/osh/ashp.cfm](http://www.faa.gov/avr/afs/osh/ashp.cfm).

The ASHPP proposes that air carriers voluntarily provide selected safety and health protections for employees currently not covered by OSHA, establish a steering committee consisting of members from FAA, air carriers, and employee unions, and contain evaluation criteria to assert program effectiveness. The program would also preserve the FAA's preeminent authority over aviation safety issues by reserving to the FAA complete and exclusive responsibility for determining whether proposed abatements of safety and health hazards would compromise or negatively affect aviation safety. The ASHPP would include electronic web based procedures for air carriers to report employee injury and illness information, thereby enabling FAA to obtain the required data. This data will be used to determine if FAA should take additional measures, including rulemaking activities, to address safety and health issues in air carrier operations. The initial plan focused on those employees whose workplace was on aircraft in operation (other than flightdeck crew). Limiting the data collection to only one employee work group would exclude other air carrier employees, such as pilots, mechanics and ramp personnel, whose working conditions are or may also be preempted from OSHA coverage under section 4(b)(1) of the OSH Act. Therefore, at the discretion of the committee, the scope of the employee injury and illness data collection under the partnership program may be expanded to include other air carrier employees. This expansion of data collection would provide FAA with a more comprehensive assessment of the overall safety and health hazards present within the air carrier industry rather than limiting the data collection to specific air carrier employees or job functions.

**Public Participation in the ASHP Aviation Rulemaking Committee**

The FAA invites members of the public to serve on the ASHP Aviation Rulemaking Committee. The committee will serve as the steering committee, provide an oversight role, receive data evaluation results, and provide advice and recommendations to the FAA to assist the agency in determining if the FAA should take additional measures to address safety and health issues in air carrier operations. The committee acts solely in an advisory capacity. The committee will discuss and present input, guidance, and recommendations

considered relevant to the ultimate disposition of issues.

Because of the diversity and complexities of the air carrier industry, the committee will be structured with a steering committee with the FAA as the chairperson. The steering committee will consist of members selected by the FAA, including aviation associations, industry representatives, employee unions, the FAA and other government entities (such as OSHA), and other participants, to provide a balance of views, interests, and expertise. Membership on the committee will be limited to facilitate discussions. Priority will be given to those applicants representing an identified segment of the air carrier community who are empowered to speak for that segment.

Other subcommittees or work groups may be established if required.

All non-Government representatives serve without Government compensation and bear all costs related to their participation on the committee or work groups. Members and participants should be available to attend all scheduled committee or work group meetings for the duration of the committee activities.

The first meeting of the committee will be scheduled as soon as possible after the comment period is expired. Work groups will be scheduled as determined by the committee and work group members to provide information and meet schedule requirements.

Make your request to participate in the ASHPP and/or on the committee, in writing, on or before March 31, 2003. Your request should provide the following information:

- Contact information (name, company and position, address, phone, facsimile, and e-mail)
- Segment(s) of the industry or organization/association you represent
- Experience, subject expertise, or other background information

The FAA will notify all selected members and participants, in writing, in advance of the first meeting. Additional information on the committee, membership, dates, and other information may be obtained on the FAA ASHP Web site at <http://www.faa.gov/avr/afs/asha/ashp.cfm>.

Commenters should be as specific as possible and provide as much detail in comments as necessary to facilitate decisionmaking. The FAA anticipates that the comments provided in response to this voluntary ASHPP and ASHP Aviation Rulemaking Committee will assist the FAA in considering options to address and enhance the safety and

health of employees in the air carrier industry.

Issued in Washington, DC on February 26, 2003.

**Louis C. Cusimano,**

*Deputy Director, Flight Standards Service.*

[FR Doc. 03-5000 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-23-AD; Amendment 39-13059; AD 2003-04-11]

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 747-200B and -200F Series Airplanes Powered by Pratt & Whitney JT9D-70 Series Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-200B and -200F series airplanes powered by Pratt & Whitney JT9D-70 series engines, that requires repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat damage (discoloration), wrinkling, and cracking; and corrective action, if necessary. The actions specified by this AD are intended to find and fix such damage, which could result in cracking or fracture of the nacelle struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6421; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 747-200B and -200F series airplanes powered by Pratt & Whitney JT9D-70 series engines was published in the **Federal Register** on November 27, 2002 (67 FR 70875). That action proposed to require repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat damage (discoloration), wrinkling, and cracking; and corrective action, if necessary.

#### **Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

#### **Explanation of Editorial Change**

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

#### **Conclusion**

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

#### **Cost Impact**

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$2,880, or \$480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003-04-11 Boeing:** Amendment 39-13059. Docket 2002-NM-23-AD.

**Applicability:** Model 747-200B and -200F series airplanes powered by Pratt & Whitney JT9D-70 series engines, certificated in any category; as listed in Boeing Special Attention Service Bulletin 747-54-2210, dated December 19, 2001.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To find and fix heat damage of the pylon skin and internal structure of the nacelle struts, which could result in cracking or fracture of the struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane; accomplish the following:

#### Repetitive Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat discoloration, wrinkling, and cracking, per the Work Instructions of Boeing Special Attention Service Bulletin 747-54-2210, dated December 19, 2001, excluding Evaluation Form. Repeat the inspection at least every 18 months.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any sign of heat discoloration is found, but there is no wrinkling: Before further flight, do a conductivity test of the discolored area(s) per the service bulletin. If the conductivity test is within the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of the service bulletin, and no cracking is found, before further flight, do a penetrant or high frequency eddy current (HFEC) inspection for cracking.

(2) If any sign of wrinkling is found: Before further flight, do a penetrant or HFEC inspection of the wrinkled area(s) for cracking, per the service bulletin.

(3) If any sign of cracking is found: Before further flight, do the corrective action required by paragraph (b) of this AD.

(b) If, during any inspection or test done by this AD, any wrinkling or cracking is found, or the conductivity limits exceed the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of Boeing Special Attention Service Bulletin 747-54-2210, dated December 19, 2001, excluding Evaluation Form: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

#### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 747-54-2210, dated December 19, 2001, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(f) This amendment becomes effective on April 8, 2003.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-4589 Filed 3-3-03; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-CE-32-AD; Amendment 39-13075; AD 2003-04-26]

RIN 2120-AA64

#### Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. This AD requires you to inspect the alternating current (AC) inverter and modify the AC inverter and inverter sync wire shield. This AD is the result of reports that electrical noise causes the inverter to shut down in flight with loss of AC-powered flight instruments. The actions specified by this AD are intended to prevent electrical noise causing the inverter to shut down, which could result in failure of key aircraft electrical systems. Such failure could lead to loss of flight instruments during flight.

**DATES:** This AD becomes effective on April 21, 2003.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of April 21, 2003.

**ADDRESSES:** You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-32-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4152; facsimile: (316) 946-4407.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*What events have caused this AD?* The FAA has received nine reports of electrical noise causing the alternating current (AC) inverter to shutdown on certain airplanes. These airplanes are equipped with KGS Electronics AC Inverter part number (P/N) SPC-10(PW), Mod 2, serial numbers 306 to 803. The shutdown of the inverter resulted in the loss of the electronic flight information system (EFIS), Radio Magnetic Indicator (RMI), and related AC-powered systems. Some airplanes experienced the loss of engine torque indication.

*What is the potential impact if FAA took no action?* Such failure of the inverter could lead to loss of flight instruments during a critical phase of flight.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation

Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 25, 2002 (67 FR 65519). The NPRM proposed to require you to inspect the alternating current (AC) inverter and modify the AC inverter and inverter sync wire shield.

*Was the public invited to comment?* The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

#### FAA's Determination

*What is FAA's final determination on this issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

#### Cost Impact

*How many airplanes does this AD impact?* We estimate that this AD affects 232 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the AC inverter inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$60 = \$120 for each inverter .....	No cost for parts .....	\$240	232 × \$240 = \$55,680

We estimate the following costs to accomplish any necessary AC inverter modification that would be required

based on the results of the inspection. We have no way of determining the

number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
2 workhours × \$60 = \$120 for each inverter (\$240 per aircraft) .....	\$310	\$550 for each airplane.

We estimate the following costs to accomplish any necessary AC inverter sync wire shield modification that

would be required based on the results of the inspection. We have no way of

determining the number of airplanes that may need such modification:



Labor cost	Parts cost	Total cost per airplane
8 workhours × \$60 = \$480 .....	\$6.00	\$486

### Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is within 6 months after the effective date of the AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Failure of the aircraft AC inverters is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 50 hours time-in-service (TIS) as it is for an airplane with 1,000 hours TIS.

For this reason, the FAA has determined that a compliance based on calendar time will be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

### Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

**2003–04–26 Raytheon Aircraft Company:**  
Amendment 39–13075; Docket No. 2002–CE–32–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1 Airplanes: Model 1900D, serial numbers UE–1 through UE–265.

(2) Group 2 Airplanes: Model 1900D, serial numbers UE–266 through UE–388.

(3) Group 3 Airplanes: Model 1900D, serial numbers UE–389 through UE–410.

(b) *Who must comply with this AD?*

Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?*

The actions specified by this AD are intended to prevent electrical noise causing the alternating current (AC) inverter to shut down, which could result in failure of key aircraft electrical systems. Such failure could lead to loss of flight instruments during a critical phase of flight.

**Note 1:** Refer to paragraph (a) to determine if your airplane is assigned to Group 1, Group 2, or Group 3. If your airplane is assigned to Group 1, Group 2, or Group 3, you only have to accomplish the requirements of either paragraph (d), (e), or (f), respectively.

(d) *What actions must I accomplish to address this problem if I have a Group 1 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
<p>(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD.</p> <p>(i) This may be accomplished by checking the logbook and positively showing that a Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check.</p> <p>(ii) If, by checking the airplane logbook or by visual inspection, it can be positively shown that a Mod 2DD inverter is installed, then the requirements of paragraph (d)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>	<p>Within 6 months after April 21, 2003 (the effective date of this AD).</p>	<p>In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001.</p>
<p>(2) If during the inspection required in paragraph (d)(1), it is found that the Mod 2DD inverter is not installed, accomplish the AC inverter modification.</p>	<p>Before further flight after the paragraph (d)(1) inspection of this AD.</p>	<p>In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.</p>

Actions	Compliance	Procedures
<p>(3) Inspect the AC inverter to determine if STC #SA00245WI-D is installed.</p> <p>(i) This may be accomplished by checking the logbook and positively showing that STC #SA00245WI-D has never been installed. A person holding a pilot's certificate may accomplish this check.</p> <p>(ii) If, by checking the logbook or visual inspection, it can be positively shown that STC #SA00245WI-D has never been installed, then the requirements of paragraph (d)(4) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001.
<p>(4) If during the inspection required in paragraph (d)(3), STC #SA00245WI-D is found installed, accomplish the AC inverter sync wire shield modification.</p>	Before further flight after the paragraph (d)(3) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.
<p>(5) Do not install, on any affected airplane, any KGS Electronics AC inverter with a S/N between 306 through 803 not identified as Mod 2DD.</p>	As of April 21, 2003 (the effective date of this AD).	Not Applicable.
<p>(6) Do not install STC #SA00245WI-D on any airplane unless the AC inverter modification required in paragraph (d)(4) of this AD is accomplished.</p>	As of April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.

(e) *What actions must I accomplish to address this problem if I have a Group 2 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
<p>(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC-10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD.</p> <p>(i) This may be accomplished by checking the logbook and positively showing that a Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check.</p> <p>(ii) If, by checking the airplane logbook or visual inspection, it can be positively shown that a Mod 2DD inverter is installed, then the requirements of paragraph (e)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001.
<p>(2) If during the inspection required in paragraph (e)(1), a Mod 2DD inverter is not installed, accomplish the AC inverter modification.</p>	Before further flight after the paragraph (e)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.
<p>(3) Accomplish the AC inverter sync wire shield modification.</p>	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.

Actions	Compliance	Procedures
(4) Do not install, on any affected airplane, any KGS Electronics AC inverter with a S/N between 306 through 803 not identified as Mod 2DD.	As of April 21, 2003 (the effective date of this AD).	Not Applicable.

(f) *What actions must I accomplish to address this problem if I have a Group 3 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC-10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that a Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or visual inspection, it can be positively shown that the Mod 2DD inverter is installed, then the requirements of paragraph (f)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001.
(2) If during the inspection required in paragraph (f)(1), it is found that the Mod 2DD inverter is not installed, accomplish the AC inverter modification.	Before further flight after the paragraph (f)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.
(3) Do not install, on any affected airplane, any KGS Electronics AC inverter with serial number in the range of 306 through 803 not identified as Mod 2DD.	As of April 21, 2003 the effective date of this AD).	Not Applicable.

**Note 2:** An owner/operator of an airplane assigned to a Group may disregard the above Group paragraphs that do not apply to his/her airplane.

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and  
(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4152; facsimile: (316) 946-4407.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Aircraft Service Bulletin SB 24-3215, Rev. 1, June 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(k) *When does this amendment become effective?* This amendment becomes effective on April 21, 2003.

Issued in Kansas City, Missouri, on February 21, 2003.

**Michael Gallagher,**  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-4595 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NE-18-AD; Amendment 39-13074; AD 2003-04-25]

RIN 2120-AA64

**Airworthiness Directives; Dowty Aerospace Propellers, Models R354, R375, R389, and R390 Propellers**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), that is applicable to Dowty Aerospace Propellers, R354/4-123-F/13, R354/4-123-F/20, R375/4-123-F/21, R389/4-123-F/25, R389/4-123-F/26, and R390/4-123-F/27 propellers. This amendment requires a one-time inspection of the hub joint mating surfaces for fretting. This amendment is prompted by reports of fretting on the joint mating faces of propeller hubs. The actions specified by this AD are intended to prevent failure of the hub due to loose hub through bolts.

**DATES:** Effective April 8, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7158; fax (781) 238-7170.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Dowty Aerospace Propellers, R354/4-123-F/13, R354/4-123-F/20, R375/4-123-F/21, R389/4-123-F/25, R389/4-123-F/26, and R390/4-123-F/27 propellers was published in the **Federal Register** on March 22, 2002 (67 FR 13294). That action proposed to require a one-time inspection of the hub joint mating surfaces for fretting in accordance with Dowty Aerospace Propellers Mandatory Service Bulletin (MSB) SF340-61-96, dated April 18, 2000. The Civil Aviation Authority (CAA) issued AD 005-04-2000 in order to ensure the airworthiness of these Dowty propellers in the United Kingdom (UK).

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that extensive experience and service history had been recorded while operating a large fleet of aircraft in excess of 25,000 flight hours over the past 17 years. The operator states that the AD would impose undue cost and maintenance requirements that would not increase the propeller safety or reliability, and that the AD would not do anything positive such as eliminating the problem or creating a safer hub component.

The FAA does not agree with the commenter. The FAA considers the one-time inspection to be a necessary safety-related inspection to guard against possible propeller hub failure as the result of loss of hub bolt preload torque that may well foster hub cracking and complete propeller loss.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Economic Analysis**

There are approximately 418 Dowty Aerospace Propellers, R354/4-123-F/13, R354/4-123-F/20, R375/4-123-F/21, R389/4-123-F/25, R389/4-123-F/26, and R390/4-123-F/27 propellers, of the affected design in the worldwide fleet. The FAA estimates that 169 propellers installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per propeller to perform the required actions, and that the average labor rate is \$60 per work hour. There are no required parts per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be \$60,840.

**Regulatory Analysis**

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2003-04-25 Dowty Aerospace Propellers:**  
Amendment 39-13074. Docket No. 2000-NE-18-AD.

**Applicability:** This airworthiness directive (AD) is applicable to Dowty Aerospace Propellers, R354/4-123-F/13, R354/4-123-F/20, R375/4-123-F/21, R389/4-123-F/25, R389/4-123-F/26, and R390/4-123-F/27 propellers. These propellers are installed on, but not limited to, SAAB 340A and 340B airplanes.

**Note 1:** This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Compliance with this AD is required within 1,800 flying hours after the effective date of this AD, unless already done.

To prevent failure of the hub due to loose hub through bolts, do the following:

#### One-Time Inspection of the Propeller Hub

(a) If the propeller hub has not been disassembled since it was received from Dowty Aerospace Propellers, no further action is required. Otherwise, do the following:

(1) Within 1,800 flying hours after the effective date of this AD, perform a one-time inspection of the hub for loose hub through bolts in accordance with 3.A.(1) through 3.A.(10) of the Accomplishment Instructions of Dowty Aerospace Propellers mandatory service bulletin (MSB) SF340-61-96, dated April 18, 2000.

(2) If wear exceeds the limits specified in 3.A.(8) of the Accomplishment Instructions of Dowty Aerospace Propellers MSB SF340-61-96, dated April 18, 2000, replace the hub with a serviceable part.

#### Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

#### Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

#### Documents That Have Been Incorporated by Reference

(d) The inspection must be done in accordance with Dowty Aerospace Mandatory Service Bulletin (MSB) SF340-61-96, dated April 18, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in CAA airworthiness directive 005-04-2000, dated April 18, 2000.

#### Effective Date

(e) This amendment becomes effective on April 8, 2003.

Issued in Burlington, Massachusetts, on February 20, 2003.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03-4596 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-334-AD; Amendment 39-13057; AD 2003-04-09]

**RIN 2120-AA64**

#### Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires repetitive inspections for discrepancies of the internal fuselage skin panels located in the stub wing areas; and corrective action if necessary. This action is necessary to detect and correct heat damage to the fuselage skin panels caused by the leakage of hot air from one of the bleed air ducts inside the stub wing, which could result in reduced structural integrity of the engine support structure. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport

Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1137; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on November 21, 2002 (67 FR 70189). That action proposed to require repetitive inspections for discrepancies of the internal fuselage skin panels located in the stub wing areas; and corrective action if necessary.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

#### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

#### Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the proposed required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$1,440, or \$60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD

were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

#### 2003-04-09 Fokker Services B.V.:

Amendment 39-13057. Docket 2001-NM-334-AD.

**Applicability:** All Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct heat damage to the fuselage skin panels caused by the leakage of hot air from one of the bleed air ducts inside the stub wing, and consequent reduced structural integrity of the engine support structure; accomplish the following:

#### Repetitive Inspections

(a) Within 6,000 flight cycles after the effective date of this AD: Perform a general visual inspection of the internal fuselage structure between frames 16060 and 16660 and the beams at the upper and lower stub wing angles in the stub wing (engine pylon) areas, for discoloration of the primer paint, buckling or waviness of the skin panel, loose and/or missing fasteners, or fasteners with sheared-off heads, by accomplishing all actions specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/53-151, dated June 4, 2001. Repeat the inspection at intervals not to exceed 6,000 flight cycles.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

#### Corrective Actions

(b) Except as provided by paragraph (c) of this AD, if any discrepancy is found (*i.e.*,

primer paint discoloration; buckling or waviness of the skin panel; missing, damaged, or loose rivets) during the general visual inspection required by paragraph (a) of this AD, before further flight, perform the applicable follow-on corrective actions (*e.g.*, eddy current inspection; measurement of the length and depth of buckles or waves in the skin panel; repair of skin panels with heat damage, buckling, or waviness that are not within the acceptable limits specified in the service bulletin, or replacement with new skin panels; and replacement of loose and/or missing fasteners, or fasteners having sheared-off heads with new fasteners; as applicable) specified in the Accomplishment Instructions of Fokker Service Bulletin F28/53-151, dated June 4, 2001.

(c) If buckling or waviness of the skin panel is detected during the general visual inspection required by paragraph (a) of this AD, and the depth is within the limits specified in Part 2, paragraph C.(2) of the Accomplishment Instructions of Fokker Service Bulletin F28/53-151, dated June 4, 2001, the affected area must be repaired within 2,000 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD.

(d) Repair or replacement of damaged fuselage skin panels or fasteners does not terminate the repetitive inspections required by this AD.

#### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Fokker Services B.V.

Service Bulletin F28/53-151, dated June 4, 2001, excluding Manual Change Notification—Maintenance Documentation MCNM F28-025, dated June 4, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Dutch airworthiness directive 2001-093, dated July 31, 2001.

#### Effective Date

(h) This amendment becomes effective on April 8, 2003.

Issued in Renton, Washington, on February 13, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-4165 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-93-AD; Amendment 39-13076; AD 2003-04-27]

**RIN 2120-AA64**

#### Airworthiness Directives; Bombardier Model CL-600-2C10 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier CL-600-2C10 series airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate functional and operational checks of the active and standby actuators of the rudder travel limiter (RTL) system. The actions specified by this AD are intended to prevent a significant latent failure in the RTL, which could lead to a critical loss of RTL function under certain conditions, and consequent loss of controllability of the airplane or structural damage. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of April 8, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7505; fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier CL-600-2C10 series airplanes was published in the **Federal Register** on September 25, 2002 (67 FR 60187). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate functional and operational checks of the active and standby actuators of the rudder travel limiter (RTL) system.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

#### Explanation of Change to Final Rule

We have revised this final rule to specify that the accountable Aircraft Certification Office (ACO) is the New York ACO, 10 Fifth Street, Third Floor, Valley Stream, New York, not the Atlanta ACO.

#### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

#### Cost Impact

The FAA estimates that 15 Model CL-600-2C10 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$900, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003-04-27 Bombardier, Inc. (Formerly Canadair):** Amendment 39-13076. Docket 2002-NM-93-AD.

**Applicability:** All Model CL-600-2C10 series airplanes, certificated in any category.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR part 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR part 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25-1529.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent a significant latent failure in the rudder travel limiter (RTL), which

could lead to a critical loss of RTL function under certain conditions, and consequent loss of controllability of the airplane or structural damage, accomplish the following:

#### Revise Airworthiness Limitations Section

(a) Within 30 days of the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the tasks of the Temporary Revisions of Part 2 of the Maintenance Requirements Manual (MRM), Section 1, Appendix A, Certification Maintenance Requirements; as listed in the following table; into the Airworthiness Limitations Section:

CRJ 700 regional jet temporary revision	Task number	Task description
MRM2-41, dated September 28, 2001 .....	27-20-00-108	RTL standby actuator (with SSCU part number (P/N) C13045BA01): Operational check of the RTL standby actuator.
MRM2-42, dated September 28, 2001 .....	27-20-00-107	RTL active and standby actuators (with SSCU P/N C13045BA02): Functional check of the RTL active and standby actuators.
MRM2-43, dated September 28, 2001 .....	27-20-00-102	RTL active and standby actuators (with SSCU P/N C13045BA02): Operational check of the RTL active and standby actuators.

(b) Thereafter, except as provided by paragraph (c) of this AD, no alternative operational and functional checks or check intervals may be approved for the task numbers specified in the temporary revisions listed in paragraph (a) of this AD.

#### Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

#### Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(e) The action shall be done in accordance with CRJ 700 Regional Jet, Temporary Revision MRM2-41, dated

September 28, 2001; CRJ 700 Regional Jet, Temporary Revision MRM2-42, dated September 28, 2001; and CRJ 700 Regional Jet, Temporary Revision MRM2-43, dated September 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF-2002-06, dated January 21, 2002.

#### Effective Date

(f) This amendment becomes effective on April 8, 2003.

Issued in Renton, Washington, on February 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-4852 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 610

[Docket No. 97N-0449]

RIN 0910-AB51

#### Revision to the General Safety Requirements for Biological Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the biologics regulations regarding general biological products standards by adding an administrative procedure for obtaining exemptions from the general safety test (GST) requirements. We are taking this action because the GST may not be relevant or necessary for certain biological products. The rule will permit manufacturers of biological products to apply for an exemption from the GST requirement provided they submit information to demonstrate that they use appropriate production controls and quality assurance safeguards.

**DATES:** This rule is effective May 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics



Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under § 610.11 (21 CFR 610.11), manufacturers of biological products must perform a test for general safety on biological products intended for administration to humans. The GST is one of several tests listed in Part 610 *General Biological Product Standards* (21 CFR part 610) that are intended to help ensure the safety, purity, and potency of biological products administered to humans. The test is used to detect extraneous toxic contaminants that may be present in the product in the final container from every final filling of each lot of the biological product.

The source of such toxic contaminants may be bacterial and fungal by-products that persist after the bacteria are removed by filtration or killed by sterilization, or formulation errors that result in harmful levels of certain substances, e.g., preservatives. The test serves as a safety net to detect harmful contaminants.

Technological advances have increased the ability of manufacturers to control and analyze the manufacture of many biotechnology derived biological products. After more than a decade of experience with these products, we found that we could evaluate many aspects of a biological product's safety, purity, or potency with tests other than those prescribed in part 610. In response to these developments, FDA published in the **Federal Register** on May 14, 1996 (61 FR 24227), a final rule exempting certain biotechnology and synthetic biological products from a number of regulations applicable to biological products, including the GST (see 21 CFR 601.2(c)).

In the **Federal Register** of April 20, 1998, we published a direct final rule and a companion proposed rule (63 FR 19399 and 19431, respectively) to revise the general safety requirements for biological products. The direct final rule amended the regulations to exempt cellular therapy products from the GST requirement and added an administrative procedure for manufacturers of other biological products to request exemptions from performing the GST. We published a companion proposed rule to provide a procedural framework within which the rule could be finalized in the event we received any significant adverse comments regarding the direct final rule

and we withdrew or severed the direct final rule.

We received six comments. We did not receive any significant adverse comments to the amendment to specifically exempt "cellular therapy products" in § 610.11(g)(1). We received significant adverse comments on the administrative procedure provision § 610.11(g)(2). In this rulemaking, we respond to all comments received.

Accordingly, we published a notice in the **Federal Register** of August 5, 1998 (63 FR 41718), confirming in part and withdrawing in part the direct final rule amending the GST requirements. We confirmed a revision to § 610.11(g)(1) to add "cellular therapy products" to the list of products excepted from the GST. Based on receipt of adverse comments, we withdrew the revision of § 610.11(g)(2) that provided a general administrative procedure for requesting and obtaining exemptions from the GST. We applied the comments regarding the withdrawn portion of the rule to the companion proposed rule and considered them in developing this final rule.

##### II. Highlights of the Final Rule

The final rule codifies, at § 610.11(g)(2), an administrative procedure under which manufacturers of biological products may request and obtain exemptions from the GST. Many biological products are currently manufactured, or will be manufactured in the future, under highly controlled and rigorously monitored conditions. Therefore, under § 610.11(g)(2) we will permit biological product manufacturers who employ appropriate production and final filling controls and quality assurance safeguards to apply for an exemption from the GST requirement. Manufacturers who request an exemption must provide supporting documentation to the Director, Center for Biologics Evaluation and Research (CBER), as to why a product should not be subject to the GST requirement. The request must include an explanation of why the GST is unnecessary or cannot be performed due to the mode of administration, the method of preparation, or the special nature of the product and must describe alternate procedures, if any, to be employed. The Director of CBER may grant an exemption if he/she finds that the manufacturer's submission justifies an exemption.

Manufacturers wishing to obtain an exemption to the GST for a particular product should contact the appropriate CBER product division for specific information regarding how to apply and what information should be included in

the application or supplemental application.

##### III. Comments on the Proposed Rule

(Comment 1) Proposed § 610.11(g)(1) would add "cellular therapy products" to the list of products excepted from the GST.

One comment supported the amendment, and none of the comments objected to the amendment to add "cellular therapy products" to the list of exceptions.

We confirmed a revision to § 610.11(g)(1) in the **Federal Register** of August 5, 1998, notice to add "cellular therapy products" to the list of products excepted from the GST.

(Comment 2) Proposed § 610.11(g)(2) would add an administrative procedure for manufacturers to request and obtain an exemption from the GST. The proposal would require manufacturers to submit information as part of a biologics license application submission or a supplement to an approved biologics license application.

One comment opposed proposed § 610.11(g)(2) because the mechanism for requiring each licensed manufacturer to submit a license supplement to gain an exemption from the GST was too restrictive and alternative mechanisms should be available by which all manufacturers of a specific product or a group of products could be exempted.

We disagree with this comment. The comment did not suggest an alternate mechanism for our consideration. We believe such changes should be addressed on a case-by-case basis through a biologics license application or supplement so that we can ensure appropriate controls are in place to detect contaminants ordinarily found by the GST.

(Comment 3) One comment specifically objected that the administrative procedure in proposed § 610.11(g)(2) would codify FDA's use of the biologics licensure process to achieve the regulatory objectives that should be achieved instead only through notice and comment rulemaking.

We intend to revise our regulations only when a group of products which can be defined as a product type, such as "cellular therapy products," can be excepted from a regulatory provision. Rulemaking is not an efficient vehicle for exempting specific or individual products or specific manufacturers, or when there are limitations to the exemptions, which should be outlined in some detail. We believe the biologics licensure process is a more efficient

process than rulemaking for granting exemptions to the GST.

(Comment 4) Proposed § 610.11(g)(2) would allow manufacturers to request an exemption from the GST; it would not allow other entities to request such exemptions.

One comment argued that a letter from a trade association should suffice to obtain such an exemption.

We disagree with this comment. The request for exemption represents an alternative to the regulations to establish a firm, enforceable commitment by the manufacturer to FDA as to specific obligations. Submissions by an association would not be suitable because it is the manufacturer that must follow the regulations. Trade associations cannot compel specific actions by their member manufacturers. In addition, trade associations do not have the authority to change an applicant's submission.

However, anyone may submit a request to FDA, with supporting information, to revise the regulations to provide for exceptions from GST requirements.

(Comment 5) One comment noted that the proposal did not create a procedural mechanism to allow for partial exemptions. The comment explained that partial exemptions could be appropriate for specific subclasses of products.

We decline to amend the rule as suggested by the comment. The comment did not provide enough information that would allow us to determine the merits of or need for partial exemptions. However, under § 610.11(g)(2), we may accept a request for an exemption in the form of a biologics license supplement for a limited group of products after a case-by-case evaluation. Section 610.11(g)(2) gives manufacturers a mechanism for obtaining exemptions for specific biological products on an individual basis, rather than for whole "classes" of products, such as are excepted in § 610.11(g)(1). We believe such exemptions should be addressed on a case-by-case basis through a biologics license application or supplement.

(Comment 6) Two comments would revise the proposal to exempt allergenic products if each lot of stock concentrates of allergenic extracts and each lot of diluent contained in the final product satisfies the GST requirements. The comments requested that we modify 21 CFR 680.3(b)(1) to exempt allergenic extracts from the requirement to perform the repeat GST on final products when a GST is performed on a stock concentrate. The comments explained that the suggested

amendment would eliminate an unnecessary burden on the allergenic product industry that would result from separate rulemaking procedures.

The issue of exempting allergenic products is outside the scope of this rulemaking. Consequently, we decline to amend the rule as suggested by the comment.

#### IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles set forth in the Executive order. OMB has determined that the final rule is a significant regulatory action as defined by the Executive order and is subject to review under the Executive order.

In accordance with the principles of Executive Order 12866, the final rule will provide increased flexibility for applications with approved biological products and may substantially reduce the burdens on some applicants seeking approval of certain biological products.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because the final rule has no compliance costs and does not result in any new requirements, the agency certifies that the final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of \$100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

#### V. Environmental Impact

This agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

#### VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

*Title:* Request for Exemptions from the General Safety Testing Requirements for Biological Products.

*Description:* FDA is revising the requirements for GST set forth in § 610.11. The test may detect harmful contaminants that may enter or be introduced through undetected failures in the manufacture of biological products. The revision would add an administrative procedure for obtaining exemptions from the GST requirements for biological products not already excepted under § 610.11(g)(1). FDA is codifying the new administrative procedure because alternatives to the GST may be feasible or appropriate for some biological products. FDA anticipates that manufacturers requesting exemptions would have demonstrated a record of the GST compliance, well-documented in-process safety controls, and use sophisticated analytical techniques to adequately characterize the product and validate its safety. Manufacturers would submit their requests and documentation to the Director, CBER, who may grant the exemption if it is determined that the manufacturer's submission justifies such an action.

*Description of Respondents:* Manufacturers of biological products.

This final rule requires only those manufacturers requesting an exemption from the GST under § 610.11(g)(2) to submit additional information as part of a biologics license application or supplement to an approved biologics license application. Based on our experience, we estimate that we will receive approximately 10 requests for administrative exemption from the GST under § 610.11(g)(2) annually. We also estimate that an applicant will take 40 hours to complete and submit the appropriate information for the exemption request. Since the applicant

ordinarily compiles and organizes the information while performing the GST, we anticipate that the additional time

needed to submit an exemption request will be minimal.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.11(g)(2)	10	1	10	40	400

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

The direct final rule and companion proposed rule of April 20, 1998 (63 FR 19399 and 19431, respectively) provided a 60-day public comment period on the information collection provisions reflected in this final rule. Although some comments objected to the license supplement mechanism of gaining approval for an exemption as being too burdensome, we received no comments on the actual burden estimates for submitting such supplements.

## VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in that the Executive order and, consequently, a federalism summary impact statement is not required.

### List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

### PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 610.11 is amended by adding paragraph (g)(2) to read as follows:

#### § 610.11 General safety.

\* \* \* \* \*

(g) \* \* \*

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, Center for Biologics Evaluation and Research, an exemption from the general safety test. The manufacturer must submit information as part of a biologics license application submission or supplement to an approved biologics license application establishing that because of the mode of administration, the method of preparation, or the special nature of the product a test of general safety is unnecessary to assure the safety, purity, and potency of the product or cannot be performed. The request must include alternate procedures, if any, to be performed. The Director, Center for Biologics Evaluation and Research, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

Dated: February 26, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-4973 Filed 3-3-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 92

[Docket No. FR-4111-C-04]

RIN 2501-AC30

### HOME Investment Partnerships Program; Correction

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** On October 1, 2002, HUD published a final rule making several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program. The

final rule inadvertently removed the 36-month timeframe for purchasing a home under lease-purchase programs assisted with HOME funds. This document makes the necessary correction to the final rule.

**DATES:** *Effective Date:* October 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** On October 1, 2002 (67 FR 61752), HUD published a final rule making several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program. Among other changes, the final rule amended § 92.254(a)(7), which establishes the income eligibility requirements for lease-purchase agreements, to reflect a statutory change made by section 599B of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, approved October 21, 1998) (QHWRA). Section 599B of QHWRA eliminated the requirement that HOME-assisted homebuyers qualify as income eligible at the time of occupancy or when the HOME funds are invested, whichever is later. In the case of a lease-purchase agreement, section 599B requires the homebuyer to qualify as low-income at the time the agreement is signed.

In amending § 92.254(a)(7) to implement section 599B of QHWRA, the October 1, 2002 final rule inadvertently removed the 36-month timeframe for purchasing a home under lease-purchase programs assisted with HOME funds. This provision requires that the home must be purchased by the homebuyer within 36 months of signing the lease-purchase agreement. This document makes the necessary correction to the October 1, 2002 final rule.

Accordingly, rule FR Doc. 02-24820 published on October 1, 2002 (67 FR 61752) is corrected as follows:

1. On page 61756, in the third column, § 92.254(a)(7) is corrected to read as follows:

**§ 92.254 Qualification as affordable housing: Homeownership.**

(a) \* \* \*

(7) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by a homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

\* \* \* \* \*

Dated: February 20, 2003.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 03-4941 Filed 3-3-03; 8:45 am]

BILLING CODE 4210-29-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 20, 25, 31, 53, 54, 56, 301, and 602

[TD 9046]

RIN 1545-AX81; 1545-BB49; 1545-BB50; 1545-BB48; 1545-BB53; 1545-BB51; 1545-BB52; 1545-AW26; 1545-AX79

### Tax Shelter Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** These regulations finalize the rules relating to the filing by certain taxpayers of a disclosure statement with their Federal tax returns under section 6011(a), the rules relating to the registration of confidential corporate tax shelters under section 6111(d), and the rules relating to the list maintenance requirements under section 6112. These regulations affect taxpayers participating in reportable transactions, persons responsible for registering confidential corporate tax shelters, and

organizers and sellers of potentially abusive tax shelters.

**DATES:** *Effective Date:* These regulations are effective February 28, 2003.

*Applicability Date:* For dates of applicability, see § 1.6011-4(h), § 20.6011-4(b), § 25.6011-4(b), § 31.6011-4(b), § 53.6011-4(b), § 54.6011-4(b), § 56.6011-4(b), § 301.6111-2(h), and § 301.6112-1(j).

**FOR FURTHER INFORMATION CONTACT:** Tara P. Volungis or Charlotte Chyr, 202-622-3070 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545-1685, 1545-1687, and 1545-1686. Responses to these collections of information are mandatory. Form 8886, "Reportable Transaction Disclosure Statement", reflects the collection of information relating to the disclosure of reportable transactions for the regulations under § 1.6011-4, and was approved by OMB under control number 1545-1800. Form 8264, "Application for Registration of a Tax Shelter", reflects the collection of information relating to the registration of tax shelters for the regulations under § 301.6111-2 and § 301.6111-1T, and was approved by OMB under control number 1545-0865.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent/recordkeeper for the collection of information in § 1.6011-4 will be reflected on Form 8886. The estimated annual burden for the collection of information in Form 8886 is 3,770 hours and the estimated number of respondents/recordkeepers is 500. The estimated annual burden per respondent/recordkeeper for the collection of information in § 301.6111-2 is reflected on Form 8264. The estimated annual burden for the collection of information in Form 8264 is 14,382 hours and the estimated number of respondents/recordkeepers is 350. The estimated annual burden per recordkeeper for the collection of information in § 301.6112-1 is 100 hours and the estimated number of recordkeepers is 500.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document amends 26 CFR part 1 to provide rules relating to the disclosure of reportable transactions by certain taxpayers on their Federal tax returns under section 6011, and also amends 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide rules for purposes of estate, gift, employment, and pension and exempt organizations excise taxes requiring the disclosure of listed transactions by certain taxpayers on their Federal tax returns under section 6011. This document amends 26 CFR part 301 to provide rules regarding the registration of confidential corporate tax shelters under section 6111(d) and rules relating to the list maintenance requirements under section 6112.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (TD 8877, REG-103735-00; TD 8876, REG-110311-98; TD 8875, REG-103736-00) (the February 2000 regulations). The February 2000 regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations modifying the rules under sections 6011, 6111, and 6112 (TD 8896, REG-103735-00, REG-110311-98, REG-103736-00) (the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909, 65 FR 49955) on August 16, 2000. On August 2, 2001, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (TD 8961, REG-103735-00, REG-110311-98) (the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR 41133, 66 FR 41169) on August 7, 2001. On June 14, 2002, the IRS issued temporary and

proposed regulations modifying the rules under sections 6011 and 6111 (TD 9000, REG-103735-00, REG-110311-98) (the June 2002 regulations). The June 2002 regulations were published in the **Federal Register** (67 FR 41324, 67 FR 41362) on June 18, 2002. On October 17, 2002, the IRS issued temporary and proposed regulations modifying the rules under sections 6011, 6111, and 6112 (TD 9017, REG-103735-00, REG-154117-02, REG-154116-02, REG-154115-02, REG-154429-02, REG-154423-02, REG-154426-02, REG-110311-98; TD 9018, REG-103736-00) (the October 2002 regulations). The October 2002 regulations were published in the **Federal Register** (67 FR 64799, 67 FR 64840; 67 FR 64807, 67 FR 64842) on October 22, 2002. On December 11, 2002, and on January 7, 2003, the IRS and Treasury Department held a public hearing on these regulations. Written and electronic comments responding to the temporary regulations and the notices of proposed rulemaking were received. After consideration of all the statements and comments, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

## Explanation and Summary of Comments

### 1. In General

These regulations finalize the rules for disclosure of reportable transactions, registration of confidential corporate tax shelters, and list maintenance of potentially abusive tax shelters. Sections 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, 56.6011-4, and 301.6111-2 finalize each corresponding proposed regulation with few, if any, changes. Sections 1.6011-4 and 301.6112-1 modify and finalize each corresponding proposed regulation.

The IRS and Treasury Department received numerous comments relating to the October 2002 temporary regulations regarding disclosure under § 1.6011-4T and list maintenance under § 301.6112-1T. All comments were reviewed thoroughly. In particular, the IRS and Treasury Department reviewed the commentators' suggested clarifications to the rules pertaining to loss transactions and transactions with a significant book-tax difference, and to the rules pertaining to who must disclose transactions under section 6011. The IRS and Treasury Department also focused specifically on the comments relating to the rules pertaining to material advisors and the

rules pertaining to the persons who must be included on lists under section 6112. In response to the commentators' suggested clarifications, the final regulations have been revised to tailor more narrowly the scope of the transactions for which disclosure and maintenance of information under sections 6011 and 6112 is required. The major changes to the regulations are described below.

### 2. Section 6011—Participants

The definition of participation has been clarified in the final regulations. Reporting of transactions by RICs and reporting of certain leasing transactions have been excluded from the requirements under § 1.6011-4, provided that the transactions are not listed transactions.

### 3. Section 6011—Confidential Transactions

A confidential transaction is a transaction that is offered under conditions of confidentiality. The regulations generally provide a presumption of non-confidentiality if the taxpayer receives written authorization to disclose the tax treatment and tax structure of the transaction. Some commentators suggested the following changes to the regulations: (1) clarification regarding when the written authorization to disclose has to be effective, (2) clarification regarding whether proprietary transactions are confidential if there is a written authorization to disclose, and (3) an exception for certain merger and acquisition transactions. In response to those comments, the IRS and Treasury Department have made modifications to the factors for a confidential transaction in the final regulation.

The final regulations delete the clarification, under the definition of a confidential transaction for purposes of both section 6011 and section 6111, that a privilege held by the taxpayer does not cause a transaction to be confidential. The IRS and Treasury Department believe that this clarification is not necessary because the attorney-client privilege (or the confidentiality privilege of section 7525(a)) does not affect whether a transaction is confidential. A claim of privilege does not restrict the taxpayer's ability to disclose the tax treatment or tax structure of a transaction.

### 4. Section 6011—Transactions with Contractual Protection

Commentators indicated that it is inappropriate to require the reporting of a transaction for which the taxpayer

obtains tax insurance. Other commentators suggested that the contractual protection factor would require the reporting of numerous non-abusive types of transactions, such as legitimate business transactions with tax indemnities or rights to terminate the transaction in the event of a change in tax law. In response to these comments, the IRS and Treasury Department changed the focus of the contractual protection factor to whether fees are refundable or contingent. However, if it comes to the attention of the IRS and Treasury Department that other types of contractual protection, including tax insurance or tax indemnities, are being used to facilitate abusive transactions, changes to the regulations will be considered.

### 5. Section 6011—Loss Transactions

Many commentators suggested that the loss transaction factor was over broad and would require disclosure of a significant number of transactions occurring in the ordinary course of business. In response to these comments, exceptions to the loss transaction factor will be issued in separate published guidance.

### 6. Section 6011—Transactions with a Significant Book-Tax Difference

The IRS and Treasury Department received many comments on the use of U.S. GAAP, the manner in which gross assets are to be calculated, and the potential exclusion of items for purposes of the book-tax difference factor. In response, the final regulations revise the book-tax difference factor to provide that if a taxpayer in the ordinary course of its business keeps books on a basis other than U.S. GAAP and does not use U.S. GAAP for any purpose, then the taxpayer may determine the treatment of a book item by using the books maintained by the taxpayer, provided the books are kept on the same basis consistently from year to year. In addition, the final regulations increase the requisite gross asset amount to \$250 million or more and specify that the amount of gross assets is determined by ascertaining whether the gross assets equaled or exceeded \$250 million for book purposes at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs.

In response to comments that the scope of the book-tax difference factor was over broad, the IRS and Treasury Department have revised the exceptions to this factor. The exceptions to the book-tax difference factor have been removed from the regulations and will

be issued in separate published guidance.

#### 7. Section 6011—Form 8886

Taxpayers will disclose reportable transactions under the final regulations on Form 8886. Reportable transactions entered into on or after January 1, 2003, and prior to February 28, 2003, for which the taxpayer does not choose to apply the final regulations, may be disclosed on Form 8886 or as provided in § 1.6011-4T(c) as published in the **Federal Register** (67 FR 41324) on June 18, 2002. Form 8886 will allow taxpayers to aggregate substantially similar transactions on one form for disclosure purposes.

#### 8. Section 6112

Commentators requested clarification on the definition of a material advisor and the threshold fee requirement. In response to those comments, the final regulations provide that a person is a material advisor if the person is required to register a transaction under section 6111, or the person receives at least a minimum fee with respect to the transaction and makes a tax statement to certain taxpayers. In addition, the IRS and Treasury Department have clarified that fees are defined as all fees for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter.

In the final regulations, the IRS and Treasury Department have clarified that the procedures for asserting a privilege claim apply to information required to be maintained in § 301.6112-1(e)(3)(i)(I) that might be privileged. This change reflects the IRS and Treasury Department's belief that the other information covered by these regulations is not privileged. These procedures neither expand nor contract the scope of items that may be privileged.

#### Effective Date

Regulations §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, 56.6011-4, 301.6111-2, and 301.6112-1 apply to transactions entered into on or after February 28, 2003.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby

certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. With regard to disclosure and registration, this certification is based upon the fact that the time required to prepare or retain the disclosure or registration is not lengthy and will not have a significant impact on those small entities that are required to provide disclosure or to register. With regard to list maintenance, this certification is based upon the fact that the number of respondents is small, those persons responsible for maintaining the list described in the regulations are principally sophisticated businesses, including accounting firms and law firms, and very few respondents, if any, are likely to be small businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charlotte Chyr of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

##### 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

##### 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

##### 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

##### 26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, 56, 301, and 602 are amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.6011-4 is added to read as follows:

##### **§ 1.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.**

(a) *In general.* Every taxpayer that has participated, as described in paragraph (c)(3) of this section, in a reportable transaction within the meaning of paragraph (b) of this section and who is required to file a tax return must attach to its return for the taxable year described in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general.* A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and

transactions involving a brief asset holding period.

(2) *Listed transactions.* A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality. A transaction is considered offered to a taxpayer under conditions of confidentiality if the taxpayer's disclosure of the tax treatment or the tax structure of the transaction is limited in any manner by an express or implied understanding or agreement with or for the benefit of any person who makes or provides a statement, oral or written, to the taxpayer (or for whose benefit a statement is made or provided to the taxpayer) as to the potential tax consequences that may result from the transaction, whether or not such understanding or agreement is legally binding. A transaction also will be considered offered to a taxpayer under conditions of confidentiality if the taxpayer knows or has reason to know that the taxpayer's use or disclosure of information relating to the tax treatment or tax structure of the transaction is limited in any other manner (such as where the transaction is claimed to be proprietary or exclusive) for the benefit of any person, other than the taxpayer, who makes or provides a statement, oral or written, to the taxpayer (or for whose benefit a statement is made or provided to the taxpayer) as to the potential tax consequences that may result from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a transaction is offered to a taxpayer under conditions of confidentiality, including the prior conduct of the parties.

(ii) *Exceptions*—(A) *Securities law.* A transaction is not considered offered to a taxpayer under conditions of confidentiality if disclosure of the tax treatment or tax structure of the transaction is subject to restrictions reasonably necessary to comply with securities laws and such disclosure is not otherwise limited.

(B) *Mergers and acquisitions.* In the case of a proposed taxable or tax-free acquisition of historic assets of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that constitute an active trade or business

the acquirer intends to continue, or a proposed taxable or tax-free acquisition of more than 50 percent of the stock of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that owns historic assets used in an active trade or business the acquirer intends to continue, the transaction is not considered a confidential transaction under this paragraph (b)(3) if the taxpayer is permitted to disclose the tax treatment and tax structure of the transaction no later than the earlier of the date of the public announcement of discussions relating to the transaction, the date of the public announcement of the transaction, or the date of the execution of an agreement (with or without conditions) to enter into the transaction. However, this exception is not available where the taxpayer's ability to consult any tax advisor (including a tax advisor independent from all other entities involved in the transaction) regarding the tax treatment or tax structure of the transaction is limited in any way.

(iii) *Presumption.* Unless the facts and circumstances indicate otherwise, a transaction is not considered offered to a taxpayer under conditions of confidentiality if every person who makes or provides a statement, oral or written, to the taxpayer (or for whose benefit a statement is made or provided to the taxpayer) as to the potential tax consequences that may result from the transaction, provides express written authorization to the taxpayer in substantially the following form: "the taxpayer (and each employee, representative, or other agent of the taxpayer) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure". Except as provided in paragraph (b)(3)(ii) of this section, this presumption is available only in cases in which each written authorization permits the taxpayer to disclose the tax treatment and tax structure of the transaction immediately upon commencement of discussions with the person providing the authorization and each written authorization is given no later than 30 days from the day the person providing the written authorization first makes or provides a statement to the taxpayer regarding the tax consequences of the transaction. A transaction that is claimed to be exclusive or proprietary to any party other than the taxpayer will

not be considered a confidential transaction under this paragraph (b)(3) if written authorization to disclose is provided to the taxpayer in accordance with this paragraph (b)(3)(iii) and the transaction is not otherwise confidential.

(4) *Transactions with contractual protection*—(i) *In general.* A transaction with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained. A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the parties to the transaction have not designated as fees or any agreement to provide services without reasonable compensation.

(ii) *Fees.* Paragraph (b)(4)(i) of this section only applies with respect to fees paid by or on behalf of the taxpayer or a related party to any person who makes or provides a statement, oral or written, to the taxpayer or related party (or for whose benefit a statement is made or provided to the taxpayer or related party) as to the potential tax consequences that may result from the transaction.

(iii) *Exceptions*—(A) *Termination of transaction.* A transaction is not considered to have contractual protection solely because a party to the transaction has the right to terminate the transaction upon the happening of an event affecting the taxation of one or more parties to the transaction.

(B) *Previously reported transaction.* If a person makes or provides a statement to a taxpayer as to the potential tax consequences that may result from a transaction only after the taxpayer has entered into the transaction and reported the consequences of the transaction on a filed tax return, and the person has not previously received fees from the taxpayer relating to the transaction, then any refundable or contingent fees are not taken into account in determining whether the transaction has contractual protection. This paragraph (b)(4)(iii)(B) does not provide any substantive rules regarding when a person may charge refundable or contingent fees with respect to a



transaction. See Circular 230, 31 CFR Part 10, for the regulations governing practice before the IRS.

(5) *Loss transactions*—(i) *In general.* A loss transaction is any transaction resulting in the taxpayer claiming a loss under section 165 of at least—

(A) \$10 million in any single taxable year or \$20 million in any combination of taxable years for corporations;

(B) \$10 million in any single taxable year or \$20 million in any combination of taxable years for partnerships that have only corporations as partners (looking through any partners that are themselves partnerships), whether or not any losses flow through to one or more partners; or \$2 million in any single taxable year or \$4 million in any combination of taxable years for all other partnerships, whether or not any losses flow through to one or more partners;

(C) \$2 million in any single taxable year or \$4 million in any combination of taxable years for individuals, S corporations, or trusts, whether or not any losses flow through to one or more shareholders or beneficiaries; or

(D) \$50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Cumulative losses.* In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of taxable years as described in paragraph (b)(5)(i) of this section, only losses claimed in the taxable year that the transaction is entered into and the five succeeding taxable years are combined.

(iii) *Section 165 loss.* (A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See § 1.165-1(c)(4). However, a section 165 loss does not take into account offsetting gains, or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses). The full amount of a section 165 loss is taken into account for the year in which the loss is sustained, regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or a net capital loss under section 1212 that is a carryback or carryover to another year.

A section 165 loss does not include any portion of a loss, attributable to a capital loss carryback or carryover from another year, that is treated as a deemed capital loss under section 1212.

(B) For purposes of this section, a section 165 loss includes an amount deductible pursuant to a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(6) *Transactions with a significant book-tax difference*—(i) *In general.* A transaction with a significant book-tax difference is a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than \$10 million on a gross basis from the amount of the item or items for book purposes in any taxable year. For purposes of this determination, offsetting items shall not be netted for either tax or book purposes. For purposes of this paragraph (b)(6), the amount of an item for book purposes is determined by applying U.S. generally accepted accounting principles (U.S. GAAP) for worldwide income. However, if a taxpayer, in the ordinary course of its business, keeps books for reporting financial results to shareholders, creditors, or regulators on a basis other than U.S. GAAP, and does not maintain U.S. GAAP books for any purpose, then the taxpayer may determine the amount of a book item for purposes of this paragraph (b)(6) by using the books maintained by the taxpayer, provided the books are kept on the same basis consistently from year to year. Adjustments to any reserve for taxes are disregarded for purposes of determining the book-tax difference.

(ii) *Applicability*—(A) *In general.* This paragraph (b)(6) applies only to—

(1) Taxpayers that are reporting companies under the Securities Exchange Act of 1934 (15 U.S.C. 78a) and related business entities (as described in section 267(b) or 707(b)); or

(2) Business entities that have \$250 million or more in gross assets for book purposes at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs (for purposes of this determination, the assets of all related business entities (as defined in section 267(b) or 707(b)) must be aggregated).

(B) *Consolidated returns.* For purposes of this paragraph (b)(6), in the case of taxpayers that are members of a

group of affiliated corporations filing a consolidated return, transactions solely between or among members of the group will be disregarded. Moreover, where two or more members of the group participate in a transaction that is not solely between or among members of the group, items shall be aggregated (as if such members were a single taxpayer), but any offsetting items shall not be netted.

(C) *Foreign persons.* In the case of a taxpayer that is a foreign person (other than a foreign corporation that is treated as a domestic corporation for Federal tax purposes under section 269B, 953(d), 1504(d) or any other provision of the Internal Revenue Code), only assets that are U.S. assets under § 1.884-1(d) shall be taken into account for purposes of paragraph (b)(6)(ii)(A)(2) of this section, and only transactions that give rise to income that is effectively connected with the conduct of a trade or business within the United States (or to losses, expenses, or deductions allocated or apportioned to such income) shall be taken into account for purposes of this paragraph (b)(6).

(D) *Owners of disregarded entities.* In the case of an eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes, items of income, gain, loss, or expense that otherwise are considered items of the entity for book purposes shall be treated as items of its owner, and items arising from transactions between the entity and its owner shall be disregarded, for purposes of this paragraph (b)(6).

(E) *Partners of partnerships.* In the case of a taxpayer that is a member or a partner of an entity that is treated as a partnership for Federal tax purposes, items of income, gain, loss, or expense that are allocable to the taxpayer for Federal tax purposes, but otherwise are considered items of the entity for book purposes, shall be treated as items of the taxpayer for purposes of this paragraph (b)(6).

(7) *Transactions involving a brief asset holding period.* A transaction involving a brief asset holding period is any transaction resulting in the taxpayer claiming a tax credit exceeding \$250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for 45 days or less. For purposes of determining the holding period, the principles of section 246(c)(3) and (c)(4) apply. Transactions resulting in a foreign tax credit for withholding taxes or other taxes imposed in respect of a dividend that are not disallowed under section 901(k) (including transactions eligible for the exception for securities



dealers under section 901(k)(4) are excluded from this paragraph (b)(7).

(8) *Exceptions*—(i) *In general*. A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction under paragraphs (b)(3) through (7) of this section, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of this section. The Commissioner may make a determination by individual letter ruling under paragraph (f) of this section that an individual letter ruling request on a specific transaction or type of transaction satisfies the reporting requirements of this section with regard to that transaction or type of transaction for the taxpayer who requests the individual letter ruling.

(ii) *Special rule for RICs*. For purposes of this section, a regulated investment company (RIC) as defined in section 851 or an investment vehicle that is owned 95 percent or more by one or more RICs at all times during the course of the transaction are not required to disclose a transaction that is described in any of paragraphs (b)(3) through (7) of this section unless the transaction is also a listed transaction.

(iii) *Special rule for lease transactions*. For purposes of this section, leasing transactions of the type excepted from the registration requirements under section 6111(d) of the Code and the list maintenance requirements under section 6112 as described in Notice 2001-18 (2001-1 C.B. 731) (see § 601.601(d)(2) of this chapter) are excluded from paragraphs (b)(3) through (7) of this section.

(c) *Definitions*. For purposes of this section, the following terms are defined as follows:

(1) *Taxpayer*. The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. Except as otherwise specifically provided in this section, the term *taxpayer* also includes an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation*. When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Participation*—(i) *In general*—(A) *Listed transactions*. A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the

transaction under paragraph (b)(2) of this section. A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under paragraph (b)(2) of this section. Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction.

(B) *Confidential transactions*. A taxpayer has participated in a confidential transaction if the taxpayer's tax return reflects a tax benefit from the transaction and the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in paragraph (b)(3) of this section. If a partnership's, S corporation's or trust's disclosure is limited, and the partner's, shareholder's, or beneficiary's disclosure is not limited, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the confidential transaction.

(C) *Transactions with contractual protection*. A taxpayer has participated in a transaction with contractual protection if the taxpayer's tax return reflects a tax benefit from the transaction and, as described in paragraph (b)(4) of this section, the taxpayer has the right to the full or partial refund of fees or the fees are contingent. If a partnership, S corporation, or trust has the right to a full or partial refund of fees or has a contingent fee arrangement, and the partner, shareholder, or beneficiary does not individually have the right to the refund of fees or a contingent fee arrangement, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the transaction with contractual protection.

(D) *Loss transactions*. A taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss equals or exceeds the threshold amount applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and a section 165 loss as described in paragraph (b)(5) of this section flows through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss that

flows through to the taxpayer equals or exceeds the threshold amounts applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. For this purpose, a tax return is deemed to reflect the full amount of a section 165 loss described in paragraph (b)(5) of this section allocable to the taxpayer under this paragraph (c)(3)(i)(D), regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or net capital loss under section 1212 that the taxpayer may carry back or carry over to another year.

(E) *Transactions with a significant book-tax difference*. A taxpayer has participated in a transaction with a significant book-tax difference if the taxpayer's tax treatment of an item from the transaction differs from the book treatment of that item as described in paragraph (b)(6) of this section. In determining whether a transaction results in a significant book-tax difference for a taxpayer, differences that arise solely because a subsidiary of the taxpayer is consolidated with the taxpayer, in whole or in part, for book purposes, but not for tax purposes, are not taken into account.

(F) *Transactions involving a brief asset holding period*. A taxpayer has participated in a transaction involving a brief asset holding period if the taxpayer's tax return reflects items giving rise to a tax credit described in paragraph (b)(7) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and the items giving rise to a tax credit described in paragraph (b)(7) of this section flow through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a transaction involving a brief asset holding period if the taxpayer's tax return reflects the tax credit and the amount of the tax credit claimed by the taxpayer exceeds \$250,000.

(G) *Shareholders of foreign corporations*—(1) *In general*. A reporting shareholder of a foreign corporation participates in a transaction described in paragraphs (b)(2) through (5) and (b)(7) of this section if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were a domestic corporation filing a tax return that reflects the items from the transaction. A reporting shareholder participates in a transaction described in paragraph (b)(6) of this section only if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were

a domestic corporation and the transaction reduces or eliminates an income inclusion that otherwise would be required under section 551, 951, or 1293. A reporting shareholder (and any successor in interest) is considered to participate in a transaction under this paragraph (c)(3)(i)(G) only for its first taxable year with or within which ends the first taxable year of the foreign corporation in which the foreign corporation participates in the transaction, and for the reporting shareholder's five succeeding taxable years.

(2) *Reporting shareholder.* The term *reporting shareholder* means a United States shareholder (as defined in section 551(a)) in a foreign personal holding company (as defined in section 552), a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957), or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(ii) *Examples.* The following examples illustrate the provisions of paragraph (c)(3)(i) of this section:

*Example 1.* Notice 95-53 (1995-2 C.B. 334) (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a transferred basis transaction, for example, a transaction described in section 351. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor's and transferee corporation's tax returns reflect tax positions described in Notice 95-53. Therefore, the transferor and transferee corporation have participated in the listed transaction. In the section 351 transaction, the transferor will have received stock with low value and high basis from the transferee corporation. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a transferred basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived indirectly from the lease stripping transaction, then the taxpayer has participated in the listed transaction. Accordingly, the taxpayer must disclose the transaction and the manner of the taxpayer's participation in the transaction under the rules of this section. If a bank lends money to the transferor, transferee corporation, or taxpayer for use in their transactions, the bank has not participated in the listed transaction because the bank's tax return does not reflect tax consequences or a tax strategy described in the listing notice (nor does the bank's tax return reflect a tax benefit derived from tax consequences or a tax strategy described in the listing notice),

nor is the bank described as a participant in Notice 95-53.

*Example 2.* XYZ is a limited liability company treated as a partnership for tax purposes. X, Y, and Z are members of XYZ. X is an individual, Y is an S corporation, and Z is a partnership. XYZ enters into a confidential transaction under paragraph (b)(3) of this section. X is bound by the confidentiality agreement, but Y and Z are not bound by the agreement. As a result of the transaction, XYZ, X, Y, and Z all reflect a tax benefit on their tax returns. Because XYZ's and X's disclosure of the tax treatment and tax structure are limited in the manner described in paragraph (b)(3) of this section and their tax returns reflect a tax benefit from the transaction, both XYZ and X have participated in the confidential transaction. Neither Y nor Z has participated in the confidential transaction because they are not subject to the confidentiality agreement.

*Example 3.* Partnership AB has gross assets with a book value of over \$250 million. Partner A is an SEC reporting company and partner B is an individual. AB enters into a transaction that results in a book-tax difference for AB of \$25 million. The transaction is a reportable transaction for AB under paragraph (b)(6) of this section because the book-tax difference exceeds \$10 million. As a result of A's partnership interest in AB and the allocation of items relating to the transaction to A, A has a book-tax difference of \$11 million. The transaction is a reportable transaction for A under paragraph (b)(6) of this section because the \$11 million book-tax difference exceeds \$10 million. However, even though \$14 million of the book-tax difference would be allocated to B, the transaction is not a reportable transaction for B under paragraph (b)(6) of this section because B, an individual, is not subject to paragraph (b)(6) of this section.

*Example 4.* (i) P corporation, the parent corporation of a group of corporations that file a consolidated tax return, owns 60% of the stock of T corporation. T files its own tax return and is not included as a member of the P group on the P group consolidated tax return. For book purposes, some or all of T's income is included by the group of corporations that includes P. T engages in a transaction that results in items of book income but does not result in items of income for tax purposes. P and T are SEC reporting companies.

(ii) T participated in the transaction. T has no items of taxable income but has items of book income. If items from the transaction result in a book-tax difference determined in accordance with paragraph (b)(6) of this section of \$10 million in any single year, T will be required to file Form 8886. The P group did not participate in the transaction, and does not have a book-tax difference for purposes of paragraph (b)(6) of this section because, even if the P group included \$10 million in book income, the book tax difference arises solely because T is not part of P's consolidated group for tax purposes.

(iii) If the facts were changed so that P corporation owned 80% of the stock of T and T was a member of the P consolidated group for tax purposes, the P group would be the taxpayer that participated in the transaction.

If, in any single year, the transaction produced items of income for book purposes of \$10 million but no items of taxable income, P would be required to file Form 8886. This result would not change if T separately reported its items for book purposes, if P reported none of T's items on its consolidated financial statements, or if the P consolidated financial statements included only part of a \$10 million book-tax difference relating to items from T's transaction.

*Example 5.* Domestic corporations X and Y each own 50 percent of the voting stock of CFC, a controlled foreign corporation. X, Y, and CFC each use the calendar year as their taxable year. CFC is not engaged in the conduct of a trade or business within the United States and has no U.S. source income. Accordingly, CFC is not required to file a U.S. Federal income tax return. See § 1.6012-2(g). Under paragraph (c)(3)(i)(G)(2) of this section, X and Y are reporting shareholders with respect to CFC. CFC purchases a Euro-denominated bond on June 1, 2003, for 104,400,000 Euros. The bond matures on June 7, 2003, and CFC collects 104,500,000 Euros, equal to the bond's 100,000,000 Euro face amount plus 5,000,000 Euros of accrued but unpaid interest, less a 10% foreign withholding tax of 500,000 Euros. The average dollar-Euro exchange rate for the year is \$.80 = 1 Euro, so CFC adds \$400,000 to its post-1986 foreign income taxes pool as a result of the transaction. See sections 986(a)(1) and 902(c)(2). Under paragraph (c)(3)(i)(G)(1) of this section, X and Y have each participated in a transaction involving a brief asset holding period described in paragraph (b)(7) of this section for their taxable years 2003 through 2008 because both X and Y are reporting shareholders of CFC, and CFC would have been considered to have participated in a reportable transaction if it were a domestic corporation.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure. The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) The following examples

illustrate the provisions of this paragraph (c)(4):

*Example 1.* Notice 2000-44 (2000-2 C.B. 255) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000-44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000-44.

*Example 2.* Notice 2001-16 (2001-1 C.B. 730) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001-16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001-16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

(5) *Tax.* For purposes of this section, the term tax means Federal income tax.

(6) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return.* For purposes of this section, the term tax return means a Federal income tax return and a Federal information return.

(8) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction.

(d) *Form and content of disclosure statement.* The IRS will release Form

8886, "Reportable Transaction Disclosure Statement" (or a successor form), for use by taxpayers in accordance with this paragraph (d). A taxpayer required to file a disclosure statement under this section must file a completed Form 8886 in accordance with the instructions to the form. The Form 8886 is the disclosure statement required under this section. The form must be attached to the appropriate tax returns as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent to: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224, or to such other address as provided by the Commissioner.

(e) *Time of providing disclosure—(1) In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed with the taxpayer's tax return. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's tax return for each taxable year in which the partnership or S corporation participates in the transaction under the rules of paragraph (c)(3)(i) of this section.

(2) *Special rules—(i) Listed transactions.* If a transaction becomes a listed transaction after the filing of the taxpayer's final tax return reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction) and before the end of the statute of limitations period for that return, then a disclosure statement must be filed as an attachment to the taxpayer's tax return next filed after the date the transaction is listed.

(ii) *Loss transactions.* If a transaction becomes a loss transaction because the losses equal or exceed the threshold amounts as described in paragraph (b)(5)(i) of this section, a disclosure statement must be filed as an

attachment to the taxpayer's tax return for the first taxable year in which the threshold amount is reached and to any subsequent tax return that reflects any amount of section 165 loss from the transaction.

(3) *Multiple disclosures.* The taxpayer must disclose the transaction in the time and manner provided for under the provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94-69 (1994-2 C.B. 804) (see § 601.601(d)(2) of this chapter).

(4) *Example.* The following example illustrates the application of this paragraph (e):

*Example.* In January of 2004, F, a domestic calendar year corporation, enters into a transaction that is not a listed transaction when entered into and is not a transaction described in any of the paragraphs (b)(3) through (7) of this section. All the tax benefits from the transaction are reported on F's 2004 tax return. On March 1, 2008, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. The statute of limitations for F's 2004 taxable year is still open. F is required to file Form 8886 for the transaction as an attachment to F's next filed Federal income tax return and must send a copy of Form 8886 to OTSA. If F's 2007 Federal income tax return has not been filed on or before the date the Service identifies the transaction as a listed transaction, Form 8886 must be attached to F's 2007 return and at that time a copy of Form 8886 must be sent to OTSA.

(f) *Rulings and protective disclosures—(1) Requests for ruling.* A taxpayer may, on or before the date that disclosure would otherwise be required under this section, submit a request to the IRS for a ruling as to whether a transaction is subject to the disclosure requirements of this section. If the request fully discloses all relevant facts relating to the transaction, the potential obligation of that taxpayer to disclose the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a reportable transaction subject to disclosure under this section, until the 60th day after the issuance of the ruling (or, if the request is withdrawn, 60 days after the date that the request is withdrawn). Furthermore, in that taxpayer's individual ruling, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for that particular transaction or type of transaction.

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section, and indicate on the disclosure statement that the taxpayer is uncertain whether the transaction is required to be disclosed under this section and that the disclosure statement is being filed on a protective basis.

(3) *Rulings on the merits of a transaction.* If a taxpayer requests a ruling on the merits of a specific transaction on or before the date that disclosure would otherwise be required under this section, and receives a favorable ruling as to the transaction, the disclosure rules under this section will be deemed to have been satisfied by that taxpayer with regard to that transaction, so long as the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section.

(g) *Retention of documents.* In accordance with the instructions to Form 8886, the taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the tax treatment or tax structure of the transaction. The documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was required under this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) The documents may include the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the purported or claimed tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction. A taxpayer is not required to retain earlier drafts of a document if the taxpayer retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax

treatment or tax structure of the transaction.

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a) through (g) of this section apply to transactions entered into on or after February 28, 2003. All the rules in paragraphs (a) through (g) of this section may be relied upon for transactions entered into on or after January 1, 2003, and before February 28, 2003. Otherwise, the rules that apply with respect to transactions entered into before February 28, 2003 are contained in § 1.6011-4T in effect prior to February 28, 2003 (see 26 CFR part 1 revised as of April 1, 2002, 2002-28 I.R.B. 90, and 2002-45 I.R.B. 818 (see § 601.601(d)(2) of this chapter)).

#### § 1.6011-4T [Removed]

**Par. 3.** Section 1.6011-4T is removed.

### PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

**Par. 4.** The authority citation for part 20 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 5.** Section 20.6011-4 is added to read as follows:

#### § 20.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an estate tax under chapter 11 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### § 20.6011-4T [Removed]

**Par. 6.** Section 20.6011-4T is removed.

### PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

**Par. 7.** The authority citation for part 25 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 8.** Section 25.6011-4 is added to read as follows:

#### § 25.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as

defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves a gift tax under chapter 12 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### § 25.6011-4T [Removed]

**Par. 9.** Section 25.6011-4T is removed.

### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

**Par. 10.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 11.** Section 31.6011-4 is added to read as follows:

#### § 31.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### § 31.6011-4T [Removed]

**Par. 12.** Section 31.6011-4T is removed.

### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

**Par. 13.** The authority citation for part 53 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 14.** Section 53.6011-4 is added to read as follows:

#### § 53.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 42 of subtitle D of the Internal Revenue

Code (relating to private foundations and certain other tax-exempt organizations), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### **§ 53.6011-4T [Removed]**

**Par. 15.** Section 53.6011-4T is removed.

### **PART 54—PENSION EXCISE TAXES**

**Par. 16.** The authority citation for part 54 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 17.** Section 54.6011-4 is added to read as follows:

#### **§ 54.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.**

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 43 of subtitle D of the Internal Revenue Code (relating to qualified pension, etc., plans), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### **§ 54.6011-4T [Removed]**

**Par. 18.** Section 54.6011-4T is removed.

### **PART 56—PUBLIC CHARITY EXCISE TAXES**

**Par. 19.** The authority citation for part 56 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 20.** Section 56.6011-4 is added to read as follows:

#### **§ 56.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.**

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 41 of subtitle D of the Internal Revenue Code (relating to public charities), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

#### **§ 56.6011-4T [Removed]**

**Par. 21.** Section 56.6011-4T is removed.

### **PART 301—PROCEDURE AND ADMINISTRATION**

**Par. 22.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 23.** Section 301.6111-2 is added as follows:

#### **§ 301.6111-2 Confidential corporate tax shelters.**

(a) *In general.*—(1) Under section 6111(d) and this section, a confidential corporate tax shelter is treated as a tax shelter subject to the requirements of sections 6111 (a) and (b).

(2) A confidential corporate tax shelter is any transaction—

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section, for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of \$100,000 in the aggregate, as described in paragraph (d) of this section.

(3) For purposes of this section, references to the term *transaction* include all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and include any series of steps carried out as part of a plan. For purposes of this section, the term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of registration. For examples, see § 1.6011-4(c)(4) of this chapter.

(4) A transaction described in paragraph (b) of this section is for a direct or an indirect corporate participant if it is expected to provide Federal income tax benefits to any

corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction.

(b) *Transactions structured for avoidance or evasion of Federal income tax.*—(1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2) or (3) of this section. However, a transaction described in paragraph (b)(3) of this section need not be registered if the transaction is described in paragraph (b)(4) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. If a transaction becomes a listed transaction after the date on which registration would otherwise be required under this section, and if the transaction otherwise satisfies the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section, registration shall in all events be required with respect to any interests in the transaction that are offered for sale after the transaction becomes a listed transaction. However, because a transaction identified as a listed transaction is generally considered to have been structured for a significant tax avoidance purpose, such a transaction ordinarily will have been subject to registration under this section before becoming a listed transaction if the transaction previously satisfied the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section.

(3) *Other tax-structured transactions.* A transaction is described in this paragraph (b)(3) if it has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person who would be responsible for registration under this section)

reasonably expects the transaction to be presented in the same or substantially similar form to more than one potential participant, unless the promoter reasonably determines that—

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice (a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business); and

(ii) There is a generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a tax shelter promoter (or other person who would be responsible for registration under this section) cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the tax treatment and tax structure of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that one or more knowledgeable tax practitioners have provided an opinion or advice to the effect that the intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii).

(4) *Excepted transactions.* The avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the transaction is described in either paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of

any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(4)(i) applies only if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662-3(b)(3) of this chapter under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

(ii) The IRS makes a determination by published guidance that the transaction is not subject to the registration requirements of this section.

(iii) The IRS makes a determination by individual ruling under paragraph (b)(5) of this section that a specific transaction is not subject to the registration requirements of this section for the taxpayer requesting the ruling.

(5) *Requests for ruling.* If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the

transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, "Application for Registration of a Tax Shelter", which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

(6) *Example.* The following example illustrates the application of paragraphs (b)(1) through (4) of this section. Assume, for purposes of the example, that the transaction is not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6111 and, thus, is not described in paragraph (b)(2) of this section. The example is as follows:

*Example.* (i) *Facts.* Y has designed a combination of financial instruments to be issued as a package by corporations. The financial instruments are expected to be treated as equity for financial accounting purposes and as debt giving rise to allowable interest deductions for Federal income tax purposes. Y reasonably expects to present this method of raising capital to more than one potential corporate participant. Assume that, because of the unusual nature of the combination of financial instruments, Y cannot conclude either that the transaction represented by the financial instruments is in customary commercial form or that there is a generally accepted understanding that interest deductions are available to issuers of substantially similar combinations of financial instruments. Further, assume that Y cannot reasonably determine that the IRS would have no reasonable basis to deny the deductions.

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(3) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(3) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(5) of this section, and Y will not be required to register the transaction while the ruling is pending or for sixty days thereafter.

(c) *Conditions of confidentiality—(1) In general.* All the facts and circumstances relating to the transaction will be considered when determining

whether an offer is made under conditions of confidentiality as described in section 6111(d)(2), including prior conduct of the parties. Pursuant to section 6111(d)(2)(A), if an offeree's disclosure of the tax treatment or tax structure of the transaction is limited in any manner by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction. The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction. Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the offeree's use or disclosure of information relating to the tax treatment or tax structure of the transaction is limited for the benefit of any person other than the offeree in any other manner, such as where the transaction is claimed to be proprietary or exclusive to the tax shelter promoter or any party other than the offeree.

(2) *Exceptions*—(i) *Securities law*. An offer is not considered made under conditions of confidentiality if disclosure of the tax treatment or tax structure of the transaction is subject to restrictions reasonably necessary to comply with securities laws and such disclosure is not otherwise limited.

(ii) *Mergers and acquisitions*. In the case of a proposed taxable or tax-free acquisition of historic assets of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that constitute an active trade or business the acquirer intends to continue, or a proposed taxable or tax-free acquisition of more than 50 percent of the stock of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that owns historic assets used in an active trade or business the acquirer intends to continue, the transaction is not considered offered under conditions of confidentiality under paragraph (c)(1) of this section if the offeree is permitted to disclose the tax treatment and tax structure of the transaction no later than the earlier of the date of the public announcement of discussions relating to the transaction, the date of the public announcement of the transaction, or the

date of the execution of an agreement (with or without conditions) to enter into the transaction. However, this exception is not available where the offeree's ability to consult any tax advisor (including a tax advisor independent from all other entities involved in the transaction) regarding the tax treatment or tax structure of the transaction is limited in any way.

(3) *Presumption*. Unless facts and circumstances indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the offeree related to such tax treatment and tax structure. Except as provided in paragraph (c)(2) of this section, this presumption is available only in cases in which each written authorization permits the offeree to disclose the tax treatment and tax structure of the transaction immediately upon commencement of discussions with the tax shelter promoter providing the authorization and each written authorization is given no later than 30 days from the day the tax shelter promoter commenced discussions with the offeree. A transaction that is exclusive or proprietary to any party other than the offeree will not be considered offered under conditions of confidentiality if written authorization to disclose is provided to the offeree in accordance with this paragraph (c)(3) and the transaction is not otherwise confidential.

(d) *Determination of fees*. All the facts and circumstances relating to the transaction will be considered when determining the amount of fees, in the aggregate, that the tax shelter promoters may receive. For purposes of this paragraph (d), all consideration that tax shelter promoters may receive is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter. For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the

facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of \$100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

(e) *Registration*—(1) *Time for registering*—(i) *In general*. A tax shelter must be registered not later than the day on which the first offering for sale of interests in the shelter occurs. An offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000 shall be considered the first offer for sale under this section.

(ii) *Special rule*. If a transaction becomes a confidential corporate tax shelter (e.g., because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the next offering for sale of interests in the shelter. If, subsequent to the first offering for sale, a transaction becomes a confidential corporate tax shelter because the transaction becomes a listed transaction on or after February 28, 2003, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section within 60 days after the transaction becomes a listed transaction/confidential corporate tax shelter if any interests were offered for sale within the previous six years.

(2) *Procedures for registering*. To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, "Application for Registration of a Tax Shelter". (Form 8264 is also used to register tax shelters defined in section 6111(c).) Similar to the treatment provided under Q&A-22 and Q&A-48 of § 301.6111-1T, transactions involving similar business assets and similar plans or arrangements that are offered to corporate taxpayers by the same person or related persons are aggregated and considered part of a single tax shelter.



However, in contrast with the requirement of Q&A-48 of § 301.6111-1T, the tax shelter promoter may file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) must be registered on the same Form 8264.

(f) *Definition of tax shelter promoter.* For purposes of section 6111(d)(2) and this section, the term *tax shelter promoter* includes a tax shelter organizer and any other person who participates in the organization, management or sale of a tax shelter (as those persons are described in section 6111(e)(1) and § 301.6111-1T (Q&A-26 through Q&A-33) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

(g) *Person required to register—(1) Tax shelter promoters.* The rules in section 6111 (a) and (e) and § 301.6111-1T (Q&A-34 through Q&A-39) determine who is required to register a confidential corporate tax shelter. A promoter of a confidential corporate tax shelter must register the tax shelter only if it is a person required to register under the rules in section 6111(a) and (e) and § 301.6111-1T (Q&A-34 through Q&A-39).

(2) *Persons who discuss the transaction; all promoters are foreign persons—(i) In general.* If all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the transaction must register the shelter under this section within 90 days after beginning such discussions.

(ii) *Exceptions.* Registration by a person discussing participation in a transaction is not required if either—

(A) The person does not participate, directly or indirectly, in the shelter and notifies the tax shelter promoter in writing, within 90 days of beginning such discussions, that the person will not participate; or

(B) Within 90 days after beginning such discussions, the person obtains and reasonably relies on both—

(1) A written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section; and

(2) A copy of the registration.

(iii) *Determination of foreign status.* For purposes of this paragraph (g)(2), a person must presume that all tax shelter promoters are foreign persons unless the person either—

(A) Discusses participation in the tax shelter with a promoter that is a United States person; or

(B) Obtains and reasonably relies on a written statement from one of the promoters that at least one of the promoters is a United States person.

(iv) *Discussion.* Discussing participation in a transaction includes discussing such participation with any person that conveys the tax shelter promoter's proposal. For purposes of this paragraph (g)(2), any person that participates directly or indirectly in a transaction will be treated as having discussed participation in the transaction not later than the date of the agreement to participate. Thus, a tax shelter participant will be treated as having discussed participation in the transaction even if all discussions were conducted by an intermediary and the agreement to participate was made indirectly through another person acting on the participant's behalf (for example, through an intermediary empowered to commit the participant to participate in the shelter).

(v) *Special rule for controlled entities.* A person (first person) will be treated as participating indirectly in a confidential corporate tax shelter if a foreign person controlled by the first person participates in the shelter, and a significant purpose of the shelter is the avoidance or evasion of the first person's Federal income tax. For purposes of this paragraph (g)(2)(v), control of a foreign corporation or partnership will be determined under the rules of section 6038(e)(2) and (3), except that such section shall be applied by substituting "10" for "50" each place it appears and "at least" for "more than" each place it appears. In addition, section 6038(e)(2) shall be applied for these purposes without regard to the constructive ownership rules of section 318 and by treating stock as owned if it is owned directly or indirectly. Section 6038(e)(3) shall be applied for these purposes without regard to the last sentence of section 6038(e)(3)(B). Any beneficiary with a 10 percent or more interest in a foreign trust or estate shall be treated as controlling that trust or estate for purposes of this paragraph (g)(2)(v).

(vi) *Other rules.* (A) For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters will receive fees in excess of \$100,000 in the aggregate unless the person responsible

for registering the tax shelter can show otherwise.

(B) Any person treated as a tax shelter promoter under section 6111(d) solely by reason of being related (within the meaning of section 267 or 707) to a foreign promoter will be treated as a foreign promoter for purposes of this paragraph (g)(2).

(h) *Effective dates.* This section applies to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. If an interest is sold after February 28, 2000, it is treated as offered for sale after February 28, 2000, unless the sale was pursuant to a written binding contract entered into on or before February 28, 2000. However, paragraphs (a) through (g) of this section apply to confidential corporate tax shelters in which any interests are offered for sale on or after February 28, 2003, and to transactions described in paragraph (e)(1)(ii) of this section. The rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and before February 28, 2003, are contained in § 301.6111-2T in effect prior to February 28, 2003 (see 26 CFR part 301 revised as of April 1, 2002, 2002-28 I.R.B. 91, and 2002-45 I.R.B. 823 (see § 601.601(d)(2) of this chapter)).

#### § 301.6111-2T [Removed]

**Par. 24.** Section 301.6111-2T is removed.

**Par. 25.** Section 301.6112-1 is added as follows:

#### § 301.6112-1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

(a) *In general.* Each organizer and seller, as described in paragraph (c) of this section, of a transaction that is a potentially abusive tax shelter, as described in paragraph (b) of this section, shall prepare and maintain a list of persons in accordance with paragraph (e) of this section and upon request shall furnish such list to the Internal Revenue Service (IRS) in accordance with paragraph (g) of this section.

(b) *Potentially abusive tax shelters.* For purposes of this section, a potentially abusive tax shelter is any transaction that is a section 6111 tax shelter, as described in paragraph (b)(1) of this section, or that has a potential for tax avoidance or evasion, as described in paragraph (b)(2) of this section. The term *transaction* includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or



arrangement, and includes any series of steps carried out as part of a plan.

(1) *Transaction that is a section 6111 tax shelter.* A section 6111 tax shelter is any transaction that is required to be registered with the IRS under section 6111, regardless of whether that tax shelter is properly registered pursuant to section 6111.

(2) *Transaction that has a potential for tax avoidance or evasion—(i) In general.* A transaction that has a potential for tax avoidance or evasion includes—

(A) Any listed transaction as defined in § 1.6011-4(b)(2) of this chapter that is subject to disclosure under §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter;

(B) Any transaction that a potential material advisor (at the time the transaction is entered into or an interest is acquired) knows is or reasonably expects will become a reportable transaction under § 1.6011-4(b)(3) through (7) of this chapter; and

(C) Any interest in a type of transaction that is transferred if the transferor knows or reasonably expects that the transferee will sell or transfer an interest in that type of transaction to another transferee (subsequent participant), and the type of transaction would be a listed transaction under §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter, or a transaction described in § 1.6011-4(b)(3) through (7) of this chapter assuming that the relevant thresholds are met.

(ii) The determination of whether a transaction has the potential for tax avoidance or evasion does not depend upon whether the transaction is properly disclosed pursuant to §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter.

(iii) If a transaction becomes a potentially abusive tax shelter on or after February 28, 2003, because it is a listed transaction as defined in § 1.6011-4 of this chapter and is subject to disclosure under § 1.6011-4 of this chapter this section shall apply with respect to any such transaction entered into or any interest acquired therein after February 28, 2000 (including interests acquired before the transaction becomes a listed transaction). If a transaction becomes a listed transaction as defined in § 1.6011-4 of this chapter and is subject to disclosure under §§ 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter, this section shall apply with respect to any such transaction entered into or any interest acquired

therein on or after January 1, 2003 (including interests acquired before the transaction becomes a listed transaction).

(c) *Organizer and seller—(1) In general.* A person is an organizer of, or a seller of an interest in, a transaction that is a potentially abusive tax shelter if that person is a material advisor, as described in paragraph (c)(2) of this section, with respect to that transaction.

(2) *Material advisor—(i) In general.* A person is a material advisor with respect to a transaction that is a potentially abusive tax shelter if the person is required to register the transaction under section 6111; or the person receives or expects to receive at least a minimum fee (as defined in paragraph (c)(3) of this section) with respect to the transaction, and the person makes a tax statement (as defined in paragraph (c)(2)(iii) of this section) to or for the benefit of—

(A) A taxpayer who is required to disclose the transaction under §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter because the transaction is a listed transaction or who would have been required to disclose a listed transaction under §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter if the transaction had become a listed transaction within the statute of limitations period in § 1.6011-4(e)(2);

(B) A taxpayer who the potential material advisor (at the time the transaction is entered into) knows is or reasonably expects to be required to disclose the transaction under § 1.6011-4 because the transaction is or is reasonably expected to become a transaction described in § 1.6011-4(b)(3) through (7);

(C) A person who is required to register the transaction under section 6111;

(D) A person who purchases (or otherwise acquires) an interest in a section 6111 tax shelter; or

(E) A transferee of an interest if the interest is described in paragraph (b)(2)(i)(C) of this section.

(ii) *Special rules.* A material advisor generally does not include a person who makes a tax statement solely in the person's capacity as an employee, shareholder, partner or agent of another person. Any tax statement made by that person will be attributed to that person's employer, corporation, partnership or principal. However, a person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of

section 6111 or 6112 or the penalties under section 6707 or 6708.

(iii) *Tax statement—(A) In general.* A tax statement means any statement, oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011-4(b)(2) through (7) or a tax shelter as described in section 6111.

(B) *Confidential transactions.* A tax statement relates to an aspect of a transaction that causes it to be a confidential transaction if the statement concerns a tax benefit related to the transaction and either the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in § 1.6011-4(b)(3) of this chapter by or for the benefit of the person making the statement, or the person making the statement knows the taxpayer's disclosure of the tax structure or tax aspects of the transaction is limited in the manner described in § 1.6011-4(b)(3) of this chapter.

(C) *Transactions with contractual protection.* A tax statement relates to an aspect of a transaction that causes it to be a transaction with contractual protection if the statement concerns a tax benefit related to the transaction and either—

(1) The taxpayer has the right to a full or partial refund of fees paid to the person making the statement or if these fees are contingent in the manner described in § 1.6011-4(b)(4) of this chapter; or

(2) The person making the statement knows that the taxpayer has the right to a full or partial refund of fees (as described in § 1.6011-4(b)(4)(ii)) paid to another if all or part of the intended tax consequences from the transaction are not sustained or that fees (as described in § 1.6011-4(b)(4)(ii)) paid by the taxpayer to another are contingent on the taxpayer's realization of tax benefits from the transaction in the manner described in § 1.6011-4(b)(4) of this chapter.

(D) *Loss transactions.* A tax statement relates to an aspect of a transaction that causes it to be a loss transaction if the statement concerns an item that gives rise to a loss described in § 1.6011-4(b)(5) of this chapter.

(E) *Transactions with a significant book-tax difference.* A tax statement relates to an aspect of a transaction that causes it to be a transaction with a significant book-tax difference if the statement concerns an item that gives rise to a book-tax difference described in § 1.6011-4(b)(6) of this chapter.

(F) *Transactions involving a brief asset holding period.* A tax statement relates to an aspect of a transaction

involving a brief asset holding period if the statement concerns an item that gives rise to a tax credit described in § 1.6011-4(b)(7) of this chapter.

(iv) *Exceptions—(A) Post-filing advice.* A person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS.

(B) *Publicly-filed statements.* A tax statement with respect to a transaction that includes only information about the transaction contained in publicly-available documents filed with the Securities and Exchange Commission no later than the close of the transaction will not be considered a tax statement to or for the benefit of a person described in paragraph (c)(2)(i)(A) through (E) of this section.

(3) *Minimum fee—(i) In general.* The minimum fee is \$250,000 for a transaction if every person to whom or for whose benefit the potential material advisor makes or provides a tax statement with respect to the transaction is a corporation. The minimum fee is \$50,000 for a transaction if any person to whom or for whose benefit a potential material advisor makes or provides a tax statement with respect to the transaction is a partnership or trust, unless all owners or beneficiaries are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is \$250,000. For all other transactions, the minimum fee is \$50,000. For purposes of this paragraph (c)(3)(i) a corporation means a corporation other than an S corporation.

(ii) *Listed transactions.* For listed transactions described in §§ 1.6011-4(b)(2), 20.6011-4(a), 25.6011-4(a), 31.6011-4(a), 53.6011-4(a), 54.6011-4(a), or 56.6011-4(a) of this chapter, the minimum fees in paragraph (c)(3)(i) of this section are reduced from \$250,000 to \$25,000 and from \$50,000 to \$10,000.

(iii) *Determination of fees.* In determining whether the minimum fee threshold is satisfied, all fees for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter are taken into account. For purposes of this section, the minimum fee threshold must be met independently for each transaction that is a potentially abusive tax shelter and aggregation of fees among transactions is not required. Fees for advice or implementation include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to

the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of all of the facts and circumstances. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a transaction that is a potentially abusive tax shelter constitutes fees for purposes of this section.

(d) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Interest.* The term *interest* includes, but is not limited to, any right to participate in a transaction by reason of a partnership interest, a shareholder interest, or a beneficial interest in a trust; any interest in property (including a leasehold interest); the entry into a leasing arrangement or a consulting, management or other agreement for the performance of services; or any interest in any other investment, entity, plan, or arrangement. The term *interest* includes any interest that purportedly entitles the direct or indirect holder of the *interest* to any tax consequence (including, but not limited to, a deduction, loss, or adjustment to tax basis in an asset) arising from the transaction. An *interest* also includes information or services regarding the organization or structure of the transaction if the information or services are relevant to the potential tax consequences of the transaction.

(2) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

(3) *Person.* The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of a consolidated return under section 1501.

(4) *Related party.* A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 or 707.

(5) *Tax.* For purposes of this section, the term *tax* means Federal tax.

(6) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return.* For purposes of this section, the term *tax return* means a Federal tax return and a Federal information return.

(8) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal tax treatment of the transaction.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal tax treatment of the transaction.

(e) *Preparation and maintenance of lists—(1) In general.* A separate list of persons must be prepared and maintained for each transaction that is a potentially abusive tax shelter. However, one list must be maintained for substantially similar transactions that are potentially abusive tax shelters. A list may be maintained on paper, card file, magnetic media, or in any other form, provided the method of maintaining the list enables the IRS to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(2) *Persons required to be included on lists—(i) In general.* A material advisor is required to list each person described in paragraphs (c)(2)(i)(A) through (D) of this section to whom (or for whose benefit) the material advisor makes or provides a tax statement with respect to a transaction that is a potentially abusive tax shelter. However, a material advisor is not required to list a person described in paragraph (c)(2)(i)(A) of this section if that person entered into, or acquired an interest in, a listed transaction more than 6 years before the transaction was listed.

(ii) *Subsequent participant.* A material advisor must list any subsequent participant if the material advisor knows the identity of that subsequent participant, and the material advisor knows that the subsequent participant either entered into a transaction that must be disclosed under § 1.6011-4(b) of this chapter or sold or transferred to another subsequent participant an interest in that type of transaction.

(iii) *Section 6111 registrant.* A material advisor required to register a

transaction under section 6111 also must list each person who purchases (or otherwise acquires) an interest in the transaction.

(iv) *Examples.* The following examples illustrate the provisions of this section:

*Example 1.* An investment firm provides a tax statement as to a type of transaction to three taxpayers: Corporation X, Corporation Y, and Corporation Z (all of which are C corporations). Each taxpayer agrees to pay the investment firm \$300,000 in connection with the transaction, and each taxpayer engages in a separate transaction (transaction X, transaction Y, and transaction Z, respectively). At the time the transactions are entered into, the investment firm knows or reasonably expects that the transactions will result in a single taxable year loss of \$9 million for Corporation X, \$15 million for Corporation Y, and \$12 million for Corporation Z. The transactions do not satisfy the definitions of a reportable transaction under § 1.6011-4(b)(2), (3), (4), (6) or (7) of this chapter.

(i) *Transaction X.* At the time transaction X is entered into, the investment firm does not know or reasonably expect that the transaction is a reportable transaction, because the \$9 million loss associated solely with transaction X does not satisfy the \$10 million threshold under § 1.6011-4(b)(5) of this chapter (relating to loss transactions). Accordingly, transaction X is not a potentially abusive tax shelter. The investment firm is not required to maintain a list with respect to transaction X.

(ii) *Transactions Y and Z.* The investment firm satisfies the requirements for being a material advisor with respect to transaction Y and transaction Z. First, both of the transactions are potentially abusive tax shelters with respect to the investment firm because the investment firm knows, or reasonably expects, at the time the transactions are entered into, that the losses for each of Corporation Y and Z will exceed the \$10 million threshold and, thus, the investment firm knows or reasonably expects that the transactions are or will become reportable transactions under § 1.6011-4(b)(5) of this chapter (relating to loss transactions). Second, the investment firm provides a tax statement to Corporation Y and Corporation Z as to the transactions. Third, the investment firm receives \$300,000 in connection with each transaction (viewed independently of each other and without regard to any other transaction), which exceeds the minimum fee with respect to each transaction (\$250,000). Accordingly, the investment firm must maintain a list with respect to transactions Y and Z. Because transactions Y and Z are based on the same or similar tax strategy, transactions Y and Z

are substantially similar transactions, and the investment firm must keep one list with respect to both transactions. The list must contain information about Corporation Y and Corporation Z (see paragraph (e)(2)(i) of this section).

*Example 2.* (i) Corporation M provides a tax statement to Corporation N (a C corporation) describing the potential loss from a type of transaction. Corporation N pays Corporation M \$300,000 for the information about that type of transaction. Corporation M knows that Corporation N will sell the information to Taxpayer O (a C corporation) and Taxpayer P (an individual), and that Taxpayer O and Taxpayer P will participate in transactions of the type that Corporation M described to Corporation N. Corporation N, in turn, provides a tax statement as to that type of transaction to Taxpayer O and Taxpayer P. Each taxpayer agrees to pay Corporation N \$250,000 in connection with its transaction, and each taxpayer engages in a separate transaction (transaction O and transaction P, respectively). At the time the transactions are entered into, both Corporation M and Corporation N know that the transactions are or will become reportable transactions under § 1.6011-4(b)(5) of this chapter.

(ii) Corporation N is a material advisor with respect to transaction O and transaction P. First, at the time the transactions are entered into, Corporation N knows that the transactions are reportable transactions. Thus, the transactions are potentially abusive tax shelters. Second, Corporation N provides a tax statement to Taxpayer O and Taxpayer P as to the transactions. Third, Corporation N receives \$250,000 in connection with transaction O and transaction P (each viewed independently of any other transaction), which equals or exceeds the minimum fee for those transactions (\$50,000 and \$250,000, respectively). Accordingly, Corporation N must keep a list with respect to transaction O and transaction P. The list must contain information about Taxpayer P (see paragraph (e)(2)(i) of this section). Because transactions O and P are based on the same or similar tax strategy, transactions O and P are substantially similar transactions, and Corporation N must keep one list with respect to both transactions. The list must contain information about Taxpayer O and Taxpayer P (see (e)(2)(i) of this section).

(iii) Corporation M's tax statement to Corporation N constitutes a potentially abusive tax shelter under paragraph (b)(2)(C) of this section. Corporation M transferred information to Corporation N regarding the potential tax consequences of a type of transaction that, if entered into and if the relevant thresholds are met, would be a reportable transaction described in § 1.6011-4(b)(5). In addition, Corporation M knew that Corporation N would transfer that

information to another person. Corporation M is a material advisor with respect to that potentially abusive tax shelter. Corporation M made a tax statement to Corporation N and Corporation M received \$300,000 in connection with the potentially abusive tax shelter, which exceeds the minimum fee for that transaction (\$250,000). Accordingly, Corporation M must keep a list with respect to that potentially abusive tax shelter. The list must contain information with respect to Corporation N (see paragraph (e)(2)(i) of this section). The list must also contain information about Taxpayer O and Taxpayer P because Corporation M knows the identity of Taxpayer O and Taxpayer P, and Corporation M knows that Taxpayer O and Taxpayer P entered into transaction O and transaction P, respectively (see paragraph (e)(2)(ii) of this section).

(3) *Contents*—(i) *In general.* Each list must contain the following information—

(A) The name of each transaction that is a potentially abusive tax shelter and the registration number, if any, obtained under section 6111;

(B) The TIN (as defined in section 7701(a)(41)), if any, of each transaction;

(C) The name, address, and TIN of each person required to be on the list;

(D) If applicable, the number of units (*i.e.*, percentage of profits, number of shares, etc.) acquired by each person required to be included on the list, if known by the material advisor;

(E) The date on which each person required to be included on the list entered into each transaction, if known by the material advisor;

(F) The amount invested in each transaction by each person required to be included on the list, if known by the material advisor;

(G) A detailed description of each transaction that describes both the tax structure and its expected tax treatment;

(H) A summary or schedule of the tax treatment that each person is intended or expected to derive from participation in each transaction, if known by the material advisor;

(I) Copies of any additional written materials, including tax analyses or opinions, relating to each transaction that are material to an understanding of the purported tax treatment or tax structure of the transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their

representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor. However, a material advisor is not required to retain earlier drafts of a document provided the material advisor retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of such document that is material to an understanding of the purported tax treatment or the tax structure of the transaction; and

(j) For each person required to be on the list, if the interest in the transaction was not acquired from the material advisor maintaining the list, the name of the person from whom the interest was acquired.

(ii) [Reserved]

(f) *Retention of lists.* Each material advisor must maintain the list described in paragraph (e) of this section for seven years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction, or the date the transaction was entered into, if known. If the material advisor required to prepare, maintain, and furnish the list is a corporation, partnership, or other entity (entity) that has dissolved or liquidated before completion of the seven-year period, the person responsible under state law for winding up the affairs of the entity must prepare, maintain and furnish the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. If state law does not specify any person as responsible for winding up the affairs, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are responsible for preparing, maintaining and furnishing the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation. The list and the notice provided to OTSA may be sent to: IRS LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224, or to such other address as provided by the Commissioner.

(g) *Furnishing of lists*—(1) *In general.* Each material advisor and person responsible for maintaining a list of persons must, upon written request by the IRS, furnish the list to the IRS

within 20 days from the day on which the request is provided. The request is not required to be in the form of an administrative summons. The list may be furnished to the IRS on paper, card file, magnetic media, or in any other form, provided the method of furnishing the list enables the IRS to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(2) *Claims of privilege*—(i) In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is required to maintain a list with respect to a transaction that is a potentially abusive tax shelter, and that person has a reasonable belief that information specified in paragraph (e)(3)(i)(I) required to be furnished under this paragraph (g) is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), the attorney or federally authorized tax practitioner must still maintain the list of persons pursuant to the requirements of this section. When the list is requested by the IRS, as provided in paragraph (g)(1) of this section, the material advisor may assert a privilege claim as to the information specified in paragraph (e)(3)(i)(I) subject to the requirements of this paragraph (g)(2).

(ii) The claimed privilege must be supported by a statement that is signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify and describe (as set forth in this paragraph (g)(2)) the nature of each document that is not produced which will allow the IRS to determine the applicability of the privilege or protection claimed, without revealing the privileged information itself, and must include the following representations with respect to each document for which the privilege is claimed—

(A) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of the direct or indirect participation of a corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)); and

(B) Specifically represent that to the best of such person's knowledge and belief, that the person and all others in possession of the omitted information did not disclose the omitted information to any person whose receipt of such

information would result in a waiver of the privilege.

(iii) Identification and description of a document includes, but is not limited to—

(A) The date appearing on such document or, if it has no date, the date or approximate date that such document was created;

(B) The general nature, description and purpose of such document and the identity of the person who signed such document, and, if it was not signed, the identity of each person who prepared it; and

(C) The identity of each person to whom such document was addressed and the identity of each person, other than such addressee, to whom such document, or a copy thereof, was given or sent.

(h) *Designation agreements.* If more than one material advisor is required to maintain a list of persons, in accordance with paragraph (e) of this section, for a potentially abusive tax shelter, the material advisors may designate by written agreement a single material advisor to maintain the list or a portion of the list. The designation of one material advisor to maintain the list does not relieve the other material advisors from their obligation to furnish the list to the IRS in a timely manner. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete.

(i) *Procedure for obtaining rulings.* A person may submit a request to the IRS for a ruling as to whether a specific transaction will be considered a potentially abusive tax shelter for purposes of this section and whether that person is a material advisor with respect to that transaction. If the request fully discloses all relevant facts relating to the transaction (including all facts relevant to the person's relationship to such transaction), then the requirement to maintain a list shall be suspended for that person during the period that the ruling request is pending and for 60 days thereafter; however, if it is ultimately determined that the transaction is a potentially abusive tax shelter and that the person is a material advisor with respect to that transaction, the pendency of such a ruling request shall not affect the requirement to maintain the list, nor shall it affect the

persons required to be included on the list (including persons who acquired interests in the potentially abusive tax shelter prior to and during the pendency of the ruling request), or the other information required to be included as part of the list.

(j) *Effective date.* This section applies to any transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, on or after February 28, 2003. However, this section shall apply to any transaction that was entered into, or in which an interest was acquired, after February 28, 2000, if the transaction becomes a potentially abusive tax shelter on or after February 28, 2003 because it is a listed transaction as defined in § 1.6011-4 of this chapter, and is subject to disclosure under § 1.6011-4 of this chapter. This section also shall apply to any transaction that was entered into, or in which an interest was acquired, after January 1, 2003, if the transaction becomes a listed transaction as defined in § 1.6011-4 of this chapter and is subject to disclosure under §§ 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4 or 56.6011-4 of this chapter. The rules in § 301.6112-1T as contained in 2002-45 I.R.B. 826 (see § 601.601(d)(2) of this chapter) apply only to a transaction entered into, or an interest acquired therein, on or after January 1, 2003, and before February 28, 2003, if the transaction is a listed transaction as defined in § 1.6011-4 of this chapter or a section 6111 tax shelter. Otherwise, the rules that apply with respect to any transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, before January 1, 2003, are contained in § 301.6112-1T in effect prior to January 1, 2003 (see 26 CFR part 301 revised as of April 1, 2002). Additionally, the IRS will not ask to inspect any list for a potentially abusive tax shelter that is entered into, or any interest acquired therein, on or after January 1, 2003, until June 1, 2003, unless the potentially abusive tax shelter is a listed transaction as defined in § 1.6011-4 of this chapter or a transaction that is a section 6111 tax shelter.

#### § 301.6112-1T [Removed]

**Par. 26.** Section 301.6112-1T is removed.

### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 27.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 28.** In § 602.101, paragraph (b) is amended as follows:

1. The following entries to the table are removed:

#### § 602.101 OMB Control numbers.

* * *	
(b) * * *	
CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.6011-4T .....	1545-1685
* * *	* *
301.6111-2T .....	1545-0865
	1545-1687
301.6112-1T .....	1545-1686
* * *	* *

2. The following entries are added in numerical order to the table:

#### § 602.101 OMB Control numbers.

* * *	
(b) * * *	
CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.6011-4 .....	1545-1685
* * *	* *
301.6111-2 .....	1545-0865
	1545-1687
301.6112-1 .....	1545-1686
* * *	* *

Approved: February 26, 2003.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

**Pamela F. Olsen,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03-4958 Filed 2-28-03; 10:47 am]

**BILLING CODE 4830-01-P**

### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-088-FOR]

#### West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule.

**SUMMARY:** We are correcting our decision on an amendment submitted by the State of West Virginia as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On May 1, 2002, we published our decision on the provisions submitted by West Virginia. We are correcting our decisions on four of the State's responses that were intended to satisfy required program amendments. The decisions being corrected concern the use of an unjust hardship criterion in support of granting temporary relief of an order, economic feasibility related to appeals to the Environmental Quality Board concerning the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) and, water supply replacement waivers, and coal removal incidental to development. This correction is intended to comply with the decision of the United States District Court for the Southern District of West Virginia.

**EFFECTIVE DATE:** March 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158, Internet address: [chfo@osmre.gov](mailto:chfo@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

By letter dated November 30, 2000 (Administrative Record Number WV-1189), the West Virginia Department of Environmental Protection (WVDEP) sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment included numerous attachments and was submitted in response to several required program amendments codified in the Federal regulations at 30 CFR 948.16.

We announced receipt of the proposed amendment in the January 3, 2001, **Federal Register** (66 FR 335-340), and provided for public comment until February 28, 2001.

By letter dated February 26, 2002, WVDEP sent us a status report regarding the required program amendments codified at 30 CFR 948.16

(Administrative Record Number WV-1276). The report included 14 attachments, and outlined actions taken in an attempt to satisfy the required program amendments. The actions include proposed policies, rules and laws, form changes, and referrals to legal staff. In addition, WVDEP stated that law and rule changes that would satisfy some of the required amendments would be proposed during the 2002 regular legislative session, and that none of the proposed revisions would be implemented without OSM approval. In the end, the State failed to pass legislation on the required program amendments codified at 30 CFR 948.16(nnn) concerning the use of an unjust hardship criterion in support of granting temporary relief of an order, (ooo) concerning economic feasibility related to appeals to the Environmental Quality Board concerning the WVSCMRA, and (oooo) concerning coal removal incidental to development.

By letter dated March 8, 2002, WVDEP sent us revisions to two of the attachments it had sent us in its February 26 letter (Administrative Record Number WV-1280). The March 8, 2002, letter also included one new attachment intended to address the required amendment at 30 CFR 948.16(sss) relating to water supply replacement waivers.

In the March 25, 2002, **Federal Register** (67 FR 13577-13585), we reopened the comment period to provide the public an opportunity to review and comment on the topics discussed in the January 15, 2002, meeting; WVDEP's February 26 and March 8, 2002, submittals; and related information that we provided to WVDEP (Administrative Record Number WV-1285). The comment period closed on April 9, 2002.

In our May 1, 2002, decision (67 FR 21904) on these amendments, we removed all of the required amendments, including the required amendments at 30 CFR 948.16(nnn), (ooo), and (oooo) where the State failed to take legislative action, and the required amendment at 30 CFR 948.16(sss) where the State committed to implementing its program consistent with the Federal law and regulations despite the existing State language being inconsistent with Federal provisions.

#### Need for the Correction

On January 9, 2003, the United States District Court for the Southern District of West Virginia in *West Virginia*

*Highlands Conservancy v. Norton*, Civil Action No. 2:00-1062 (S.D. W.Va. Jan. 9, 2003), vacated OSM's decisions to remove the required program amendments codified in the Federal regulations at 30 CFR 948.16(nnn), (ooo), (sss), and (oooo).

To implement this decision, we are amending the Federal regulations at 30 CFR 948.16 to reinstate the required program amendments at (nnn), (ooo), (sss), and (oooo) that we deleted in the May 1, 2002, **Federal Register**. We are requiring that within 60 days of publication of this notice, West Virginia must submit either proposed amendments or descriptions of amendments together with timetables for enactment that will satisfy these required amendments.

#### Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because, consistent with the Court's opinion, this rule merely reinstates required program amendments that the Court remanded to OSM for reconsideration. Therefore, opportunity for prior comment is unnecessary and we are issuing this regulation as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of this final rule because we are merely restoring required program amendments that the court remanded to OSM for reconsideration.

Dated: January 28, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR Part 948 is amended as set forth below:

#### PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 948.16 is amended by adding paragraphs (nnn), (ooo), (sss), and (oooo) to read as follows:

#### § 948.16 Required regulatory program amendments.

\* \* \* \* \*

(nnn) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B-1-7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3, of the West Virginia Code.

(ooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B-1-7(h) by removing reference to Article 3, Chapter 22.

\* \* \* \* \*

(sss) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR § 38-2-14.5(h) and § 22-3-24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of "Replacement of water supply," paragraph (b), at 30 CFR 701.5.

\* \* \* \* \*

(oooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR § 38-2-23.

\* \* \* \* \*

[FR Doc. 03-4969 Filed 3-3-03; 8:45 am]

BILLING CODE 4310-05-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 2 and 90

[WT Docket No. 01-90; ET Docket No. 98-95; RM-9096; FCC 02-302]

#### Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band)

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; dismissal.

**SUMMARY:** In this document the Federal Communications Commission incorporates into the licensing and service rules for the 5.9 GHz band, issues raised in two petitions for reconsideration filed in response to the Allocation Report and Order because the issues raised in them address issues concerns the licensing and services rules. As a consequence, the Commission dismisses the two petitions as moot and incorporates them into the

docket to the licensing and service rules.

**ADDRESSES:** Federal Communications Commission 445 12th Street, SW., TW-A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Nancy M. Zaczek at (202) 418-7590, Gerardo Mejia at (202) 418-2895 or via e-mail at [nzaczek@fcc.gov](mailto:nzaczek@fcc.gov) or [gmejia@fcc.gov](mailto:gmejia@fcc.gov), or via TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Order*, FCC 02-302, adopted on November 7, 2002, and released on November 15, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

1. Dismissal of Petitions for Reconsideration. Further, the FCC also seek comment on issues raised by two Petitions for Reconsideration or Clarification of the Allocation Report and Order. PanAmSat sought reconsideration of the FCC's decision that prior coordination between DSRC operations applications and Fixed Satellite Service (FSS) uplinks is unnecessary. Mark IV Industries sought reconsideration or clarification of the power levels and emission mask requirements established in the Allocation Report and Order. The FCC dismisses these two petitions for reconsideration as moot because the FCC is seeking comment on the issues raised through an NPRM which published on January 15, 2003 (68 FR 1999), and, with the benefit of a fuller record, will address those issues in this proceeding, *i.e.*, WT Docket 01-90.

**I. Ordering Clause**

2. The Petitions for Reconsideration or Clarification of the Allocation Report and Order, ET Docket No. 98-95, filed by PanAmSat Corporation and Mark IV Industries Limited, I.V.H.S. Division are dismissed as moot.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 03-4870 Filed 3-3-03; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[I.D. 022403C]**

**RIN 0648-AQ70**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of a corrected amendment; request for comments.

**SUMMARY:** NMFS has submitted an amendment to correct Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico (Amendment 14) and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20) for review, approval, and implementation by the agency.

Specifically, this amendment will eliminate one eligibility criterion in the final rule implementing Amendment 14 and Amendment 20, which states that the charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). The corrected amendment also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; and extends the expiration date of the moratorium to account for the delay in implementation.

**DATES:** Written comments must be received on or before May 5, 2003.

**ADDRESSES:** Comments must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the corrected amendment, which includes an environmental

assessment (EA), a regulatory impact review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727-570-5305; fax: 727-570-5583.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, 727-570-5305; fax 727-570-5583; e-mail: [Phil.Steele@noaa.gov](mailto:Phil.Steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or plan amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or plan amendment, immediately publish a document in the **Federal Register** stating that the plan or plan amendment is available for public review and comment.

NMFS promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 and Amendment 20. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Gulf of Mexico Fishery Management Council (Council). Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations. In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendments, and to fully comply with Magnuson-Stevens Act requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criterion in the final rule which states that the charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). The corrected amendment also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable



deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; and extends the expiration date of the moratorium to account for the delay in implementation.

In order to comply with the procedural requirements of the Magnuson-Stevens Act as stated above, the entire amendment will be submitted for review by the Secretary of Commerce, even though only one specific section of the document will be substantively altered, and if approved, new regulations will be promulgated accordingly from the properly processed amendment. Portions of the document, specifically the environmental and economic analysis required pursuant to other laws, remain in the document to provide clarity for reviewers and facilitate meaningful public comment. These analyses were previously disseminated and subject to public comment in the original amendment package. The majority of the analyses remain valid and unaffected, given that most of the regulatory measures analyzed will be unaltered by the new amendment. As stated above, the changes to the original permit moratorium relate to a single eligibility criterion and the timing of implementation of the moratorium. Where substantive changes were made to the amendment, new analyses describing these effects were conducted for the RIR and IRFA. This information is provided in the RIR and a IRFA that is included as an attachment to the amendment.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to implement the corrected amendment to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by May 5, 2003, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 26, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03-5048 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 021120279-3047-02 ; I.D. 102302B]

RIN 0648-AN12

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement approved measures contained in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this final rule establishes an annual coastwide quota for black sea bass and allows vessels to fish under a Southeast Region Snapper/Grouper permit and to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure. Finally, this final rule requires that vessels issued a Federal moratorium permit for summer flounder, scup, and black sea bass be subject to the presumption that any fish of these species on board were harvested from the exclusive economic zone (EEZ).

**DATES:** The measures contained in the final rule are effective on March 31, 2003.

**ADDRESSES:** Copies of the FMP, Amendment 13, its Regulatory Impact Review (RIR) including the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904-

6790. The FEIS/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail [sarah.mclaughlin@noaa.gov](mailto:sarah.mclaughlin@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This final rule implements measures contained in Amendment 13, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on January 29, 2003. The purpose of Amendment 13 is to rectify problems in the black sea bass commercial fishery (specifically regarding the temporal and geographic distribution of landings and permit relinquishment requirements for certain vessels) and to consider management measures to minimize the adverse effects of fishing on essential fish habitat.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (67 FR 72131, December 4, 2002) and are not repeated here.

#### Approved Measures

To implement Amendment 13, this final rule: (1) establishes an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the current quarterly quota allocation system; and (2) allows vessels to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure; previously, vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit were required to relinquish their Northeast Black Sea Bass Permits for 6 months if they wanted to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits during a Federal black sea bass fishery closure.

In addition, this final rule revises the presumptions in 50 CFR 648.14(x) for summer flounder, scup, and black sea bass. NMFS determined that § 648.14(x) erroneously omitted the presumption that summer flounder, scup, and black sea bass on board were caught in the EEZ for vessels issued moratorium permits under the three fisheries covered by the FMP. Therefore, this final rule adds the presumption that all summer flounder, scup, and black sea bass possessed on board a vessel issued a Federal permit under 50 CFR 648.4 are deemed to have been harvested from the EEZ within the management unit for the particular species. This presumption, as it pertains to black sea bass, does not apply to vessels issued a Southeast



Region Snapper/Grouper permit and a Northeast Black Sea Bass permit that are fishing for black sea bass south of Cape Hatteras during a closure of the black sea bass fishery for the area north of Cape Hatteras.

### Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 13, which this final rule implements, is necessary for the conservation and management of the black sea bass fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final environmental impact statement was prepared for Amendment 13; a notice of availability was published on October 30, 2002 (67 FR 66103). NMFS determined, upon review of the Amendment/FEIS and public comments, that approval and implementation of Amendment 13 is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment.

An FRFA was completed for this action that contains the items specified in 5 U.S.C. 604(a). The FRFA supplements the IRFA and contains a summary of the analyses completed in support of this action. A copy of the analyses is available from the Council (see **ADDRESSES**). A description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and are not repeated here. The summary of the analyses of the potential impacts of the management alternatives considered in the FMP are provided in the Classification section of the proposed rule and are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

### Public Comments

No comments were received on the IRFA, or on the measures contained in the proposed rule. Comments received in response to the Notice of Availability for the amendment pertained to issues other than economic impacts of the action.

### Number of Small Entities

The IRFA identified 727 individual vessels that were active in the black sea bass fishery in 2000, all of which appear to be small entities.

### Permits and Reporting Requirements

No additional reporting requirements are included in this final rule.

### Minimizing Significant Economic Impacts on Small Entities

The Council analyzed several quota program alternatives and selected the alternative (Federal coastwide quota) that provides the most flexibility to the states in managing their fisheries under the state-by-state quota program approved by the Commission. This alternative, relative to the others considered, is the one most beneficial for fishermen as it does not affect adversely the distribution of fishing opportunities from state to state, reduces uncertainty regarding availability of quota, and allows for more traditional fishing and trip planning. Regulations implemented by the states under the Commission's Fishery Management Plan for black sea bass, which include state-by-state quota allocations, would overlap, but would not duplicate or conflict with the Federal coastwide quota program proposed in this action. Any unavoidable adverse effects of the quota program should be minimized due to the compatibility of the Federal coastwide annual quota program and the Commission's FMP.

Although NMFS was unable to conduct analyses on the disproportionality or profitability of the regulations as part of the overall economic analysis due to a lack of quantifiable data, NMFS did project changes to gross revenues for vessels. According to both the Northeast and Southeast Region databases, allowing vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to keep their Northeast Region Black Sea Bass Permit during a fishery closure north of Cape Hatteras if they want to continue fishing for black sea bass south of Cape Hatteras under their Southeast Region Snapper/Grouper Permit would affect five vessels. Because the action would allow vessels to continue fishing south of Cape Hatteras, it would have no negative impacts on the five affected vessels, or any other vessels that in the future may be affected by the proposed elimination of the restriction. In comparison, continuation of the status quo, or requiring vessels to relinquish their Northeast Region Black Sea Bass Permit during a closure, could contribute to revenue losses for vessels that would lose fishing time north of Cape Hatteras when the fishery reopened. However, as noted, this would

affect only 5 of the 727 vessels considered in the IRFA.

For a description of the alternatives considered but rejected, see the IRFA discussion in the Classification section of the proposed rule (67 FR 72131).

### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal permits issued for the black sea bass fishery. In addition, copies of this final rule and guide are available from the Regional Administrator (see **ADDRESSES**) and on the Internet at <http://www.nero.noaa.gov>.

This final rule contains no collection-of-information requirements.

### List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: February 26, 2003.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (b) is revised to read as follows:

#### § 648.4 Vessel permits.

\* \* \* \* \*

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements

under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species except tilefish managed under this part must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium, or a spiny dogfish, or bluefish, commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is

conducted exclusively within state waters.

\* \* \* \* \*

3. In § 648.14, paragraphs (a)(96), (u)(3), (u)(11), (x)(3), (x)(6), and (x)(7) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

\* \* \* \* \*

(u) \* \* \*

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3' N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

\* \* \* \* \*

(11) Possess black sea bass after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3' N. lat.

\* \* \* \* \*

(x) \* \* \*

(3) *Summer flounder.* All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

\* \* \* \* \*

(6) *Scup.* All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(7) *Black sea bass.* All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3' N. lat.

\* \* \* \* \*

4. In § 648.140, paragraphs (b)(1), (b)(2), and (d) are revised to read as follows:

**§ 648.140 Catch quotas and other restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) A commercial quota allocated annually, set from a range of zero to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the annual coastwide quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

\* \* \* \* \*

(d) *Distribution of annual quota.* (1) Beginning on March 31, 2003, a commercial annual coastwide quota will be allocated to the commercial black sea bass fishery.

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and

landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of	an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish	notification in the <b>Federal Register</b> announcing the restoration. * * * * * [FR Doc. 03-5043 Filed 2-27-03; 3:38 pm] <b>BILLING CODE 3510-22-S</b>
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# Proposed Rules

Federal Register

Vol. 68, No. 42

Tuesday, March 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001–NM–228–AD]

RIN 2120–AA64

#### Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. This action would add one airplane to the applicability, change certain compliance times, add certain new requirements, and provide an optional modification. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 18, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2001–NM–228–AD” in the

subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2001–NM–228–AD.” The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### Discussion

On December 14, 2000, the FAA issued AD 2000–25–12, amendment 39–12047 (65 FR 81331, December 26, 2000), applicable to certain Boeing Model 747 series airplanes, to require inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. That action was prompted by a report indicating that an operator found a 24-inch-long crack in the front spar web of the right wing. The requirements of that AD are intended to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire.

#### Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–25–12, an operator reported finding a crack in the front spar web during accomplishment of the modification specified in paragraph (b) of that AD on a Model 747 series airplane. The airplane had accumulated approximately 19,500 total flight cycles and 82,000 total flight hours. The crack was found outboard of the new web section at approximately front spar station inboard (FSSI) 694, common to the splice plate and upper chord. Cracking of the web in this area can result in fuel leakage into the struts, which could result in excess fuel drainage onto an engine and a consequent fire.

Additionally, it has been determined that the optional web inspections specified in paragraph (a) of the existing AD do not provide the crack detection necessary to support the compliance time for the repeat inspection intervals. Therefore, the optional web inspections have been removed from the requirements of this AD.

## Related AD

On May 3, 1999, the FAA issued AD 99-10-09, amendment 39-11162 (64 FR 25194, May 11, 1999), applicable to certain Boeing Model 747-100, -200, and 747-SP series airplanes and military type E-4B airplanes. That AD requires repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. That AD provides for optional terminating action (modification) for the repetitive inspection requirements. This proposed AD would require post-modification inspections of that modification, if accomplished.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; and Boeing Service Bulletin 747-57A2311, Revision 2, dated February 21, 2002; both including Evaluation Form. The service bulletins describe procedures for various repetitive inspections (detailed, ultrasonic, high frequency eddy current (HFEC)) of the front spar web between the fixed leading edge seal ribs at FSSI 628 through 711 inclusive, to find cracking of the front spar web of the wing, and corrective action, if necessary. The inspections include:

- For Group 1 through Group 8 airplanes on which the optional modification specified in AD 99-10-09, amendment 39-11162, has not been done, the affected area is divided into 2 zones. Part 1 of the service bulletin describes procedures for inspecting to find cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 684 (Zone A); and between FSSI 684 and FSSI 711 inclusive (Zone B).

- For Group 1 through Group 8 airplanes on which the optional modification specified in AD 99-10-09, amendment 39-11162, has been done, the affected area is divided into 3 zones. Part 1 of the service bulletin describes procedures for inspecting to find cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 668 (Zone A); between FSSI 693 and FSSI 711 inclusive (Zone B); and between FSSI 668 and FSSI 693 inclusive (Zone C).

- For Group 9 through Group 31 airplanes, the affected area is divided into two zones. Part 1 of the service bulletin describes procedures for inspecting to find cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 684 (Zone

A); and between FSSI 684 and FSSI 711 inclusive (Zone B).

- For Group 1 through Group 8 airplanes, the inspections in this service bulletin do not replace the inspections required by AD 99-10-09.

The service bulletins also describe procedures for optional modification of the front spar web. The procedures include removing the existing fasteners and doing an open hole, rotating probe HFEC inspection of the holes for web cracks. If no cracks are found, the service bulletin describes procedures for oversizing the holes, and installing tension type fasteners. The service bulletin also describes procedures for an operational test after doing the modification. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

In addition, the service bulletin specifies that repair instructions for cracking should be obtained from the manufacturer.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000-25-12, to continue to require inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. This new action would add one airplane to the applicability, change certain compliance times, add certain new requirements, and provide an optional modification. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

## Differences Between Service Information and This Proposed AD

The service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, but this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

## Cost Impact

There are approximately 479 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 97 airplanes of U.S. registry would be affected by this proposed AD.

The external inspections that are required by AD 2000-25-12 take approximately 48 work hours per airplane (not including access and close-up), at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the external inspections is estimated to be \$2,880 per airplane, per inspection cycle.

The new inspections that are proposed in this AD action would take approximately 74 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the new inspections is estimated to be \$4,440 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional modification that would be provided by this AD action, it would take approximately 40 work hours to accomplish, at an average labor rate of \$60 per work hour. The cost of required parts would be between \$8,606 and \$28,036 per airplane. Based on these figures, the cost impact of the optional modification would be between \$11,006 and \$30,436 per airplane.

## Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-12047 (65 FR 81331, December 26, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 2001-NM-228-AD.

Supersedes AD 2000-25-12, Amendment 39-12047.

**Applicability:** Model 747 series airplanes, as listed in Boeing Service Bulletin 747-57A2311, Revision 2, dated February 21, 2002; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the front spar web of the wing, which could result in fuel leaking onto an engine and a consequent fire, accomplish the following:

#### Restatement of Certain Requirements of AD 2000-25-12

##### Repetitive Inspections

(a) Excluding Group 31 airplanes, as specified in Boeing Service Bulletin 747-57A2311, Revision 2, dated February 21, 2002: At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, except as provided by paragraph (b) of this AD,

perform the Part 1 external web inspection—including detailed, ultrasonic, and high frequency eddy current (HFEC) inspections—to detect cracking of the front spar web of the wing, in accordance with Boeing Alert Service Bulletin 747-57A2311, dated January 27, 2000. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles until accomplishment of the inspections required by paragraph (e) of this AD. Accomplishment of an optional inspection of the front spar web per AD 2000-25-12, amendment 39-12047, is considered acceptable for compliance with the applicable inspection requirement in this paragraph.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

(1) Prior to the accumulation of 13,000 total flight cycles or 30,000 total flight hours, whichever occurs first.

(2) Within 18 months after January 30, 2001 (the effective date of this AD 2000-25-12, amendment 39-12047).

##### Exception for Modified Airplanes

(b) Except as provided by paragraph (g) of this AD, for airplanes on which the front spar web between front spar station inboard (FSSI) 668 and FSSI 692 has been replaced before the effective date of this AD with a shot-peened front spar web, in accordance with AD 99-10-09, amendment 39-11162: Within 13,000 flight cycles or 30,000 flight hours after the replacement, whichever occurs first, inspect the new section of the front spar web that overlaps with the inspection area specified in Boeing Alert Service Bulletin 747-57A2311 (the area between FSSI 668 and FSSI 684), dated January 27, 2000. Repeat the inspections thereafter, in accordance with paragraph (a) of this AD.

##### Repair

(c) If any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

##### New Requirements of This AD

##### Compliance Times

(d) Where the compliance time inspection threshold is based on “after the date of this service bulletin,” in Boeing Alert Service Bulletin 747-57A2311, Revision 1, including

Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin 747-57A2311, Revision 2, dated February 21, 2002; both excluding Evaluation Form: This AD requires compliance within the inspection interval specified in the service bulletin “after the effective date of this AD.”

##### Repetitive Inspections

(e) Except as provided by paragraph (g) of this AD: Do detailed, ultrasonic, and high frequency eddy current (HFEC) inspections, as applicable, to find cracking of the front spar web of the wing, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin 747-57A2311, Revision 2, dated February 21, 2002; both excluding Evaluation Form. Do the inspections at the applicable initial inspection threshold times specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin. Repeat the applicable inspection thereafter at the applicable repeat inspection interval specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin. Accomplishment of the inspections required by this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

##### Optional Modification

(f) Accomplishment of the optional modification of the front spar web of the wing (includes removing the existing fasteners and doing an open hole, rotating probe HFEC inspection of the holes for web cracks, and if no cracks are found, oversizing the holes, and installing tension type fasteners), in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin, Revision 2, dated February 21, 2002; both excluding Evaluation Form; terminates the repetitive inspections required by paragraph (e) of this AD.

##### Post-Modification Inspections

(g) For airplanes on which the actions specified in paragraph (b) or (f) of this AD have been done before the effective date of this AD: In lieu of the inspections required by paragraph (b) or (e) of this AD, as applicable, do the applicable post-modification inspection specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin 747-57A2311, Revision 2, dated February 21, 2002; both excluding Evaluation Form; at the post-modification inspection threshold times specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin. Repeat the applicable inspection thereafter at the applicable post-modification repeat inspection interval specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin.

##### Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000-25-12, amendment 39-12047, are approved as alternative methods of compliance with paragraph (c) of this AD.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 24, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-4851 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-219-AD]

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes, that currently requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. This action would mandate the previously optional overhaul or replacement of the carriage spindles, which would end the repetitive inspections required by the existing AD. The actions specified by the proposed AD are intended to prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane. This

action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 18, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-219-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-219-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Sue Lucier, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6438; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-219-AD." The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-219-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### **Discussion**

On October 22, 2002, the FAA issued AD 2002-22-05, amendment 39-12929 (67 FR 66316, October 31, 2002), applicable to all Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes, to require repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. That action also provides for an optional action of overhaul or replacement of the carriage spindles, which would extend the repetitive inspection interval. The requirements of that AD are intended to prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane.

#### **Actions Since Issuance of Previous Rule**

In the preamble to AD 2002-22-05, we specified that the actions required by that AD were considered "interim action" and that we were considering requiring the optional overhaul or replacement of the carriage spindles. We have now determined that it is necessary to require the overhaul or replacement of the carriage spindles, and this proposed AD follows from that determination.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–57A1218, Revision 3, dated July 25, 2002. (Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, was referenced in the existing AD as the appropriate source of service information for accomplishment of the inspections to find discrepancies of each carriage spindle, and corrective action, if necessary.) Service Bulletin 737–57A1218 describes procedures for replacement or overhaul of each carriage spindle (two on each flap) of the left and right outboard mid-flaps. Such replacement or overhaul would end the repetitive inspections specified in Service Bulletin 737–57A1277. Accomplishment of the actions specified in Service Bulletin 737–57A1218 is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–22–05 to continue to require repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. This new action would mandate the previously optional overhaul or replacement of the carriage spindles, which would end the repetitive inspections required by the existing AD. The actions would be required to be accomplished in accordance with Service Bulletin 737–57A1218, Revision 3, except as discussed below.

### Difference Between Service Information and Proposed AD

The service bulletin references Boeing 737 Overhaul Manual, chapter 57–53–35 (for Model 737–100, –200, and –200C series airplanes), and chapter 57–53–36 (for Model 737–300, –400, and –500 series airplanes), for the procedures for the overhaul specified in the proposed AD. Those chapters reference Boeing 737 Standard Overhaul Practices Manual (SOPM) chapter 20–42–09, titled, “Electro-deposited Nickel Plating,” for the nickel plating procedures. The amount of nickel plating required to restore functional capability and part geometry have made certain processing steps critical within the plating process for the spindle region of the flap carriage. The processing steps are specified in

paragraph (d) of this AD, and are necessary to prevent structural failures of the carriage spindle due to hydrogen embrittlement. These processing steps have been identified by the manufacturer as critical details of the plating process, and Boeing Alert Service Bulletin 737–57A1218, Revision 3, is being revised to reflect these requirements.

### Cost Impact

There are approximately 3,132 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,384 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 2002–22–05 take approximately 10 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be \$830,400, or \$600 per airplane.

It would take approximately 2 work hours per airplane to accomplish the new detailed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$166,080, or \$120 per airplane, per inspection cycle.

Should an operator be required to accomplish the overhaul, it would take approximately 32 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the overhaul proposed by this AD is estimated to be \$1,920 per airplane.

Should an operator be required to accomplish the replacement, it would take approximately 32 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$45,000 per carriage spindle. Based on these figures, the cost impact of the replacement proposed by this AD is estimated to be \$46,920 per spindle, per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12929 (67 FR 66316, October 31, 2002), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 2002–NM–219–AD.

Supersedes AD 2002–22–05, Amendment 39–12929.

**Applicability:** All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an



alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane, accomplish the following:

#### **Restatement of Requirements of AD 2002-22-05**

##### **Repetitive Inspections**

(a) Do general visual and nondestructive test (NDT) inspections of each carriage spindle (two on each flap) of the left and right outboard mid-flaps to find cracks, fractures, or corrosion at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. Repeat the inspections at least every 180 days until paragraph (b) or (c) of this AD is done, as applicable.

(1) Before the accumulation of 12,000 total flight cycles or 8 years in-service on new or overhauled carriage spindles, whichever is first.

(2) Within 90 days after November 15, 2002 (the effective date of AD 2002-22-05, amendment 39-12929).

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

##### **Corrective Action**

(b) If any crack, fracture, or corrosion is found during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable actions for that spindle as specified in paragraph (b)(1) or (b)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. Then repeat the inspections required by paragraph (a) of this AD every 12,000 flight cycles or 8 years, whichever is first, on the overhauled or replaced spindle only.

(1) If any corrosion is found in the carriage spindle, overhaul the spindle.

(2) If any crack or fracture is found in the carriage spindle, replace with a new or overhauled carriage spindle.

**Note 3:** Although Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002,

recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

#### **New Requirements of This AD**

##### **Overhaul or Replacement**

(c) Overhaul or replace, as applicable, all four carriage spindles (two on each flap) of the left and right outboard mid-flaps at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1218, Revision 3, dated July 25, 2002. Then repeat the applicable overhaul or replacement every 12,000 flight cycles or 8 years, whichever is first. Accomplishment of this paragraph ends the repetitive inspections required by paragraphs (a) and (b) of this AD.

(1) For Model 737-100, -200, and -200C series airplanes, overhaul or replace at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle, or within 8 years since overhaul of the spindle or installation of a new spindle, whichever is first.

(ii) Within 1 year after the effective date of this AD.

(2) For Model 737-300, -400, and -500 series airplanes, overhaul or replace at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle, or within 8 years since overhaul of the spindle or installation of a new spindle, whichever is first.

(ii) Within 2 years after the effective date of this AD.

(d) During accomplishment of any overhaul required by paragraph (c) of this AD, use the procedures specified in paragraphs (d)(1) and (d)(2) of this AD during application of the nickel plating of the carriage spindle in addition to those specified in Boeing 737 Standard Overhaul Practices Manual, Chapter 20-42-09.

(1) Begin the hydrogen embrittlement relief bake within 10 hours after application of the plating, or less than 24 hours after the current was first applied to the part, whichever is first.

(2) The maximum thickness of the nickel plating that is deposited in any one plating/baking cycle must not exceed 0.020 inch.

(e) Overhauling or replacing the carriage spindles before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002, is considered acceptable for compliance with the overhaul or replacement specified in paragraph (c) of this AD.

##### **Alternative Methods of Compliance**

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### **Special Flight Permits**

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-4990 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

**[REG-104385-01]**

**RIN 1545-AY75**

#### **Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Generation Assets Cease to be Public Utility Property**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that provide guidance on the normalization requirements applicable to electric utilities that benefit (or have benefitted) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. The proposed regulations permit a utility whose electricity generation assets cease to be public utility property to return to their ratepayers the normalization reserves for excess deferred income taxes (EDFIT) and accumulated deferred investment tax credits (ADITC) with respect to those assets. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by June 2, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 25, 2003, at 10 a.m. must be received by June 2, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-104385-01), room

5226, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG-104385-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically by submitting comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, David Selig, at (202) 622-3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Treena Garrett, at (202) 622-7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the normalization requirements of sections 168(f)(2) and 168(i)(9) of the Internal Revenue Code (Code), section 203(e) of the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2146), and former section 46(f) of the Code. The proposed regulations respond to changes in the electric power industry resulting from deregulation of electricity generation facilities.

Section 168 of the Code permits the use of accelerated depreciation methods. Section 168(f)(2) provides, however, that accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes.

Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred federal income tax reserve, or ADFIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the

accelerated method used in computing actual tax expense.

This accounting treatment prevents the immediate flowthrough to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as cost-free investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between actual tax expense and ratemaking tax expense is charged to ADFIT, depleting the utility's stock of cost-free capital.

*Excess Deferred Income Tax*

The Tax Reform Act of 1986 reduced the highest corporate tax rate from 46 percent to 34 percent. The excess deferred federal income tax (EDFIT) reserve is the balance of the deferred tax reserve immediately before the rate reduction over the balance that would have been held in the reserve if the 34 percent rate had been in effect for prior periods. The EDFIT reserves were amounts that utilities had collected from ratepayers to pay future taxes that, as a result of the reduction in corporate tax rates, would not have to be paid.

Section 203(e) of the Tax Reform Act of 1986 specifies the manner in which the EDFIT reserve can be flowed through to ratepayers under a normalization method of accounting. It provides that the EDFIT reserve may be reduced, with a corresponding reduction in the cost of service the utility collects from ratepayers, no more rapidly than the EDFIT reserve would be reduced under the average rate assumption method (ARAM). For taxpayers that did not have adequate data to apply the average rate assumption method, subsequent guidance permitted use of the reverse South Georgia method as an alternative. In general, both the average rate assumption method and the reverse South Georgia method spread the flowthrough of the EDFIT reserve over the remaining lives of the property that gave rise to the excess.

*Accumulated Deferred Investment Tax Credits (ADITC)*

Former section 46 of the Code similarly limited the ability of ratepayers to benefit from the investment tax credit determined under that section. Under former section 46(f)(2), an electing utility could flow through the investment credit ratably

(that is, could reduce the cost of service collected from ratepayers by a ratable portion of the credit) over the investment's regulatory life. The balance of the credit remaining to be flowed through to ratepayers would be held in a reserve for accumulated deferred investment tax credits (ADITC). If the utility elected ratable flowthrough of the credit, the rate base (the amount on which the utility is permitted to collect a return from ratepayers) could not be reduced by reason of any portion of the credit.

*Deregulation of Generation Assets*

When the normalization provisions were added to the Internal Revenue Code, electric utilities were vertically integrated to include generation, transmission, and distribution functions. Accelerated depreciation, investment credits, and normalization enhanced the cash flow needed to acquire and construct new generation assets. Driven by changes in technology and economics, however, the electric industry has been undergoing substantial changes. Many utilities have been selling generation assets to new entities that are not subject to rate of return regulation and are becoming transmission and distribution (or distribution-only) companies. In many cases, the deregulation of generation assets is occurring before the EDFIT and ADITC reserves associated with those assets have been flowed through to ratepayers.

The Service has issued a number of private letter rulings holding that flowthrough of the EDFIT and ADITC reserves associated with an asset is not permitted after the asset's deregulation, whether by disposition or otherwise. These rulings were based on the principle that flowthrough is permitted only over the asset's regulatory life and when that life is terminated by deregulation no further flowthrough is permitted. After further consideration, the Service and Treasury have concluded that neither former section 46(f)(2) nor section 203(e) of the Tax Reform Act suggests that the EDFIT and ADITC reserves should not ultimately be flowed through to ratepayers. Instead, Congress provided a schedule for flowing through the reserves so that utilities would have the benefit of cost-free capital for a predictable period.

The proposed regulations provide that utilities whose generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise, may continue to flow through EDFIT and ADITC reserves associated with those assets without violating the normalization rules. The rate of

flowthrough is limited, however, to the rate that would have been permitted if the assets had remained public utility property and the taxpayer had continued to use a normalization method of accounting (or ratable flowthrough of the credit) with respect to the assets. This result does not impose on utilities any burden unanticipated prior to deregulation and provides the flow-through originally anticipated by ratepayers, utility commissions, and utilities.

#### *Comments Requested*

In addition to comments relating to this notice of proposed rulemaking, comments are requested on the proper disposition of tax reserves (ADFIT, EDFIT, and ADITC) under the following set of facts. Regulated transmission assets from several public utilities (related or otherwise) are transferred to a utility partnership. This partnership is created solely as a transmission company. The transaction is subject to section 721 of the Code. The transmission assets are public utility property before the transfer and will be public utility property after the transfer. Is there a normalization violation if the deferred tax reserves are transferred to the new transmission company's regulated books and are considered in setting rates for the new transmission company? Alternatively, is there a normalization violation if the deferred tax reserves remain on the transferors' regulated books and are considered in setting their rates?

In addition, the proposed regulations do not address the treatment of deregulated assets under former section 46(f)(1) (relating to the use of the investment credit to reduce the rate base of electing taxpayers). Comments are also requested on this issue.

#### **Proposed Effective Date**

The regulations are proposed to apply to property that becomes deregulated generation property after March 4, 2003. In addition, a utility may elect to apply the proposed rules to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching a written statement to the utility's return for the tax year in which the proposed rules are published as final regulations.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the **ADDRESSES** caption) timely to the IRS. All comments will be available for public inspection and copying. Treasury and IRS specifically request comments on the clarity of the proposed regulations and how they may be made clearer and easier to understand.

A public hearing has been scheduled for June 25, 2003, at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and submit an outline of the topics to be discussed and the time to be devoted to each topic by June 2, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.46–6 is amended by adding paragraph (k) to read as follows:

#### **§ 1.46–6 Limitation in case of certain regulated companies.**

\* \* \* \* \*

(k) *Treatment of accumulated deferred investment tax credits upon the deregulation of regulated generation assets—(1) Scope.* This paragraph (k) provides rules for the application of former section 46(f)(2) of the Internal Revenue Code with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(2) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's cost of service permitted under former section 46(f)(2) is equal to the amount by which the cost of service could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued to reduce its cost of service by a ratable portion of the credit with respect to such property.

(3) *Cross reference.* See § 1.168(i)–(3) for rules relating to the treatment of balances of excess deferred income taxes when utilities dispose of regulated generation assets.

(4) *Effective date—(i) General rule.* This paragraph (k) applies to property that becomes deregulated generation property after March 4, 2003.

(ii) *Election for retroactive application.* A utility may elect to apply this paragraph (k) to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement "ELECTION UNDER § 1.46–6(k)" to the taxpayer's return for the tax year in which this paragraph (k) is published as a final regulation.

**Par. 3.** Section 1.168(i)–3 is added to read as follows:

**§ 1.168(i)–(3) Treatment of excess deferred income tax reserve upon disposition of regulated generation assets.**

(a) *Scope.* This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146) with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(b) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference.* See § 1.46–6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated generation assets.

(d) *Effective date*—(1) *General rule.* This section applies to property that becomes deregulated generation property after March 4, 2003.

(2) *Election for retroactive application.* A taxpayer may elect to apply this section to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement “ELECTION UNDER § 1.168(i)–3” to the taxpayer's return for the tax year in which this section is published as a final regulation.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

[FR Doc. 03–4885 Filed 3–3–03; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 950

[WY–031–FOR]

#### Wyoming Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the “Wyoming program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions to its coal rules about roads, mine facilities, and excess spoil. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and clarify ambiguities.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t., April 3, 2003. If requested, we will hold a public hearing on the amendment on March 31, 2003. We will accept requests to speak until 4 p.m., m.s.t., on March 19, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East “B” Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, 307/261–6550, Internet: [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

Dennis Hemmer, Department of Environmental Quality, Herschler Building, 4th Floor West, Cheyenne, Wyoming 82002, 307/777–7682, Internet: [dhemmer@state.wy.us](mailto:dhemmer@state.wy.us).

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261–6550. Internet: [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### I. Background of the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and

reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of [the] Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the] Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

#### II. Description of the Proposed Amendment

By letter dated November 28, 2002, Wyoming sent us a proposed amendment to its program, (administrative record number WY–36–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a 30 CFR part 732 letter dated February 21, 1990, and an October 3, 1990, follow-up letter (administrative record numbers WY–36–6 and WY–36–7) that we sent to Wyoming, and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under

#### ADDRESSES.

Specifically, Wyoming proposes to revise the following Coal Rules:

- (1) Chapter 1, Section 2, and Chapter 2, Section 2(a) and (b), miscellaneous revisions regarding use of the terms, “primary” and “ancillary” roads and “mine facilities;”
- (2) Chapter 1, Section 2(bu), definition of public road;
- (3) Chapter 1, Section 2(bz), definition of road;
- (4) Chapter 2, Section 2(b)(i)(D)(V), maps and plans;
- (5) Chapter 2, Section 2(a) and (b), permit applications;
- (6) Chapter 2, Section 2(b)(xix), road systems;
- (7) Chapter 4, Section 2(j), road classification system;
- (8) Chapter 4, Section 2(j)(v), performance standards;
- (9) Chapter 4, Section 2(j)(v), reclamation;
- (10) Chapter 4, Section 2(j)(i)(A), and 2(j)(ii), roads and other transportation facilities;
- (11) Chapter 4, Section 1(a)(v), access roads and haulage roads;
- (12) Chapter 4, Section 2(j)(vii), primary roads;
- (13) Chapter 4, Section 2(j), exemptions concerning

roads; (14) Chapter 4, Section 2(m), disposal of mine facilities; (15) Chapter 4, Section 2(c), topsoil, subsoil, overburden, and refuse; (16) Chapter 5, Section 7(a)(ii), remining; and (17) Chapter 18, Section 3(c)(xvii), 3(d)(vi)(A), and 3(d)(ix), consistent use of the Office of Surface Mining's road classification system.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. WY-031-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261-6550.

#### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on March 19, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

#### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the

actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under

Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 950**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2003.

**Allen D. Klein,**  
*Regional Director, Western Regional  
Coordinating Center.*

[FR Doc. 03-4970 Filed 3-3-03; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 229**

[Docket No. 030221039-3039-01; I.D. 081602B]

**RIN 0648-AQ04**

#### **Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments

**SUMMARY:** NMFS proposes to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, would allow NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS proposes to identify Seasonal Area Management (SAM) anchored gillnet and lobster trap/pot gear as gear that could be allowed within a DAM zone. NMFS also includes in this proposed rule a

provision to clarify one of the SAM gear modification requirements (600 lb (272.4 kg) weak link) for lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

**DATES:** Comments on the proposed rule must be received by 5 p.m. EST on April 3, 2003.

**ADDRESSES:** Send comments on this proposed rule to Mary Colligan, Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930. Comments will not be accepted if sent via e-mail or Internet. Copies of the draft Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website listed under the Electronic Access portion of this document. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS, Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702-2432. For additional **ADDRESSES** and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.nmfs.gov/whaletrp/>. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at <http://www.wh.who.edu/psb/sar2001.pdf>. In addition, copies of the documents entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the Internet at <http://www.nero.nmfs.gov/whaletrp/>.

## Background

The ALWTRP (50 CFR 229.32) is a multi-faceted plan that includes area closures, gear requirements in areas open to fixed gear fishing, gear research to develop new modifications to current practices and/or fishing techniques, a right whale Sighting Advisory System, and a disentanglement program to free whales caught in fishing gear.

As part of the ALWTRP, NMFS issued a final rule to implement the Dynamic Area Management (DAM) program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002), which clarified its authority under 50 CFR 229.32 to temporarily restrict the use of lobster traps and/or anchored gillnet gear in areas where right whales aggregate. The DAM program establishes criteria and procedures to temporarily restrict lobster trap and anchored gillnet gear on an expedited basis within defined areas (i.e. DAM zone) north of 40° N. latitude in order to further reduce risk of entanglement to right whales by such gear. When the criteria for establishing a DAM zone are triggered, NMFS may implement fishing restrictions within the DAM zone through publication in the **Federal Register**.

Factors NMFS would consider in deciding what restrictions to implement within the DAM zone include: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data. Once a DAM zone is identified, the regulations allow NMFS to: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15-day period; (2) allow modified lobster trap and anchored gillnet gear within a DAM zone for a 15-day period; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15-day period, and asking fishermen not to set any additional gear in the DAM zone during the 15-day period. NMFS may either extend or shorten the duration of the DAM zone depending on the presence or absence of right whales in the DAM zone.

While the DAM final rule did envision, at some point in the future, that DAM zones could be implemented with gear modifications, it did not identify specific gear modifications that would sufficiently reduce the risk of entanglement to right whales. Therefore, no gear modifications were included within the analysis that supported the DAM rulemaking. This proposed rule

would identify acceptable gear that could be allowed under the DAM program. This proposed rule, if adopted, would complete the regulatory actions planned and described in the recent amendments to the ALWTRP, which included the Seasonal Area Management (SAM) program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), expanded gear modifications (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), as well as the DAM program.

## Proposed Lobster Trap and Anchored Gillnet Gear Modifications for Use in DAM Zones

On January 9, 2002, NMFS established a SAM program (67 FR 1142) to protect predictable annual congregations of right whales in the waters east of Cape Cod and seaward to the outer limits of the Exclusive Economic Zone (EEZ). Under the SAM program, NMFS defined two areas (SAM West and SAM East) and required gear modifications for lobster trap and anchored gillnet gear within these defined areas. The interim final rule restricts lobster trap and anchored gillnet gear set within each SAM area to those types designated as Level II or Low Risk Gear, which is defined as gear where death or serious injury resulting from entanglement would be highly unlikely. The requirements under the SAM program are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Gillnet Waters.

The information and analysis provided in the proposed rule for the SAM program (66 FR 59394, November 28, 2001) demonstrates that the gear modifications, including replacing floating line with neutrally buoyant and/or sinking line, installing additional weak links, reducing breaking strengths for weak links and limiting the number of buoy lines (i.e. allowing only one buoy line) prevent serious injury or mortality to right whales. NMFS estimated that the SAM requirements resulted in approximately an 85-percent reduction in floating line for offshore lobster gear and 50-percent reduction in vertical line for gillnet and lobster gear. Thus, the SAM gear modifications reduce both the potential for interaction through a significant reduction in floating and vertical line, and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths.

As the DAM program was developed in advance of the SAM program, NMFS was not able to identify or analyze SAM gear as part of the DAM program. This proposed rule identifies and analyzes the SAM gear as gear that could be used under the DAM program. NMFS believes that Level II or Low Risk gear modifications are appropriate to allow in a DAM zone because this gear has been determined to sufficiently reduce risk of entanglement of right whales. NMFS maintains that the data available and presented in the SAM proposed rule provides sufficient evidence that fishing with SAM modified gear in a DAM zone is unlikely to result in serious injury or mortality of a right whale.

This proposed rule would identify SAM modified gear as gear that could be allowed under the DAM program. NMFS analyzed additional management alternatives when deciding which type of gear modification to allow within the DAM zone (see **ADDRESSES** section for a copy of the Environmental Assessment (EA) and Classification section's summary of the Initial Regulatory Flexibility Analysis, which describes other alternatives considered). NMFS seeks comments from the public on this proposed rule and these alternatives.

The proposed gear modifications to the ALWTRP DAM program are described below. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Great South Channel Restricted Lobster Area (July 1 through March 31), Stellwagen Bank/Jeffreys Ledge Restricted Area (lobster trap and gillnet area descriptions), Cape Cod Bay Restricted Area (lobster trap and gillnet area descriptions; May 16 through December 31), Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), Mid-Atlantic Coastal Waters (gillnet area description) and Other Northeast Gillnet Waters and are consistent with the gear restrictions implemented under the SAM program. Time periods are incorporated to clarify when critical habitat areas are subject to the DAM program, which, as described (66 FR 50160, October 2, 2001; 67 FR 1142, January 9, 2002) and implemented by NMFS, are time periods when the requirements for critical habitat areas are no more conservative than the surrounding waters. Additionally, proposed SAM gear modification



requirements under the DAM program are applicable to ALWTRP management areas north of 40° N. latitude where a DAM zone could be triggered.

#### *Lobster Trap Gear*

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines and buoy lines must be made entirely of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and

3. Fishermen utilizing lobster trap gear within the DAM zone must have no more than one buoy line per trawl string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Great South Channel Restricted Lobster Area (July 1 through March 31) and Offshore Lobster Waters Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys; and

3. Fishermen utilizing lobster trap gear within the DAM zone must have no more than one buoy line per trawl string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

#### *Anchored Gillnet Gear*

In addition to the universal gear and gear marking requirements, fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through

March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys;

3. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lb (498.8 kg) each. Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be as follows: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;

4. Fishermen utilizing gillnets within the DAM zone must have no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth style anchor at each end of the net string.

#### **Clarification of Weak Link Requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas**

NMFS includes in this proposed rule a provision clarifying that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area must have a weak link with a maximum breaking strength of 600 lb (272.4 kg) at all buoys. Prior to the SAM rulemaking, the ALWTRP regulations already required a 600 lb (272.4 kg) weak link for all lobster gear in the Northern Nearshore Lobster Waters, and it was one of a suite of required options in the Northern Inshore State Lobster Waters. Although the proposed rule for SAM discussed the relationship between the proposed SAM restrictions and the existing gear requirements within the ALWTRP, the description of the SAM lobster trap gear requirements did not explicitly articulate the weak link requirement for the portions of the

Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters overlapped by the SAM areas. NMFS noted this discrepancy in the preamble to the SAM interim final rule (67 FR 1142, January 9, 2002) and intended to correct this oversight in the interim final rule. However, although NMFS discussed these changes in the preamble of the interim final rule, NMFS inadvertently omitted this clarification from the regulatory text of the SAM interim final rule. To dispel confusion NMFS may have caused in the SAM rulemaking, this action would amend the ALWTRP regulations to state explicitly that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area must have a weak link with a maximum breaking strength of 600 lb (272.4 kg) at all buoys as part of the required SAM gear modifications.

#### **Classification**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

This proposed rule would identify gear modifications that sufficiently reduce the risk of entanglement to right whales under the DAM program. The objective of this proposed rule, issued pursuant to section 118 of the Marine Mammal Protection Act (MMPA), is to reduce the level of serious injury and mortality of right whales in East Coast lobster trap and finfish gillnet fisheries. The small entities affected by this proposed rule are anchored gillnet and lobster trap fishermen fishing north of 40° N. latitude. Since DAM is used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. In the northeast, there are potentially 7,147 vessels fishing lobster gear and 312 vessels fishing sink gillnet gear (Bisack, 2000). However, NMFS does not expect that number of vessels to be affected by any one DAM zone because of the limited size and duration of a DAM zone. Data from aerial surveys in 2000 were used to retrospectively evaluate the use of the recommended DAM triggers. Based on the analysis of this data, six DAM zones would have been triggered in 2000. Four of the six hypothetical DAM zones would have been subsumed under the Seasonal Area Management (SAM) program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore the



impacts were assessed with respect to one hypothetical DAM zone from June 20 to July 6, 2000. For example, based on 2000 right whale sightings data and 2000 Vessel Trip Report (VTR) data, from June 20th to July 6th the proposed rule would have affected 45 lobster and sink gillnet vessels (29 lobster vessels and 16 sink gillnet vessels), which represents 0.4 percent of the vessels ( $0.004=29/7,147$  lobster vessels) associated with the lobster fleet and 5.1 percent of the vessels ( $0.051=16/312$  sink gillnet vessels) associated with the sink gillnet fleet in the northeast. This proposed rule contains no reporting, record keeping, or other compliance requirements. There are no relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.

Four alternatives, including a status quo or no action alternative, the preferred alternative (PA), and two other alternatives were evaluated using a retrospective analysis based on 2000 right whale sightings data and 2000 VTR data. Under all alternatives, from June 20th to July 6th, 45 vessels, of which 29 were lobster vessels and 16 were sink gillnet vessels, were affected by a DAM zone. A summary of the analysis follows:

1. NMFS considered a "no action" or status quo alternative that would result in no changes to the current measures under the ALWTRP. For the status quo, the economic impact analysis considered a complete closure to lobster and sink gillnet gear when a DAM is implemented. In the worst case scenario, a vessel would choose not to fish and therefore incur revenue losses plus the cost of moving their gear. Under status quo, if a lobster vessel chose not to fish outside the DAM zone, annual revenues would be reduced by 5 percent if these vessels chose not to fish from June 20th to July 6th. It is important to note that this represents forgone revenues for one DAM zone, and a vessel could be subject to multiple DAM zones or closures that are extended in time and space. Annual forgone revenues would be reduced by approximately 9 percent for a sink gillnet vessel if they also chose not to fish outside the DAM zone from June 20th to July 6th.

2. The Preferred Alternative would allow SAM gear modifications to be used under the DAM program. SAM gear modifications include, amongst other requirements, the use of neutrally buoyant or sinking line on all ground lines and buoy lines and restricts fishermen to one endline (buoy line) per trawl or string. Under the proposed rule, if a vessel converts its gear, Class I (length less than 35 feet (10.66m)) and

Class II (length between 35 and 50 feet (15.2m)) vessels fishing lobster gear will have profits reduced by a minimum of 3 percent (maximum of 9 percent) and 1 percent (maximum of 2 percent), respectively. A Class I (length less than 40 feet (12.2m)) and Class II (greater than 40 feet (12.2m)) vessel fishing sink gillnet gear will have profits reduced by a minimum of 0.4 percent (maximum of 0.7 percent) and 1.2 percent (maximum of 1.9 percent), respectively.

3. NMFS considered an alternative (Non-preferred alternative (NPA) 1) that would implement SAM gear modifications with two endlines (buoy lines) and floating line on the bottom third of each endline. Vessels fishing both lobster and sink gillnet gear have been grouped by size classes. Under the NPA 1 plan, if a vessel converts its gear, Class I (length less than 35 feet (10.66m)) and Class II (length between 35 and 50 feet (15.2m)) vessels fishing lobster gear will have profits reduced by a minimum of 3 percent (maximum of 10 percent) and 1 percent (maximum of 3 percent), respectively. A Class I (length less than 40 feet (12.2m)) and Class II (greater than 40 feet (12.2m)) vessel fishing sink gillnet gear will have profits reduced by a minimum of 0.4 percent (maximum of 0.7 percent) and 1.5 percent (maximum of 2.2 percent), respectively.

4. NMFS considered an alternative (NPA 2) that would implement SAM gear modifications with two endlines (buoy lines). Thus, this alternative would allow lobster trap and anchored gillnet fishermen to retain a second end line on each end of the lobster trap or gillnet trawl. Vessels fishing both lobster and sink gillnet gear have been grouped by size classes. Under the NPA 2 plan, if a vessel converts its gear, Class I (length less than 35 feet (10.66m)) and Class II (length between 35 and 50 feet (15.2m)) vessels fishing lobster gear will have profits reduced by a minimum of 3.5 percent (maximum of 10.7 percent) and 1 percent (maximum of 3 percent), respectively. A Class I (length less than 40 feet (12.2m)) and Class II (greater than 40 feet (12.2m)) vessel fishing sink gillnet gear will have profits reduced by a minimum of 0.5 percent (maximum of 0.7 percent) and 1.6 percent (maximum of 2.3 percent), respectively.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this proposed

rule is consistent with the enforceable policies of the approved coastal management program for that state.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

This proposed rule would also clarify that vessels in Northern Inshore State and Northern Nearshore Lobster Waters must install and use a 600 lb (272.4 kg) weak link at each buoy when fishing in SAM West during the time it overlaps the Northern Inshore State and Northern Nearshore Lobster Waters. Requiring a 600 lb (272.4 kg) weak link in those waters rather than a 1,500 lb (680.4 kg) weak link would benefit right whales since more right whales would be able to break a 600 lb (272.4 kg) weak link and each whale would have to exert less force since the breaking strength is lower. The impacts of this proposed requirement on small entities falls within the scope of the regulatory flexibility analyses performed in conjunction with the original SAM proposed and interim final rules. The December 2001 SAM EA/RIR analyzed impacts of requiring a 1,500 lb (680.4 kg) weak link, rather than a 600 lb (272.4 kg) weak link. The cost of a 600 lb (272.4 kg) weak link is similar or less than the cost of the 1,500 lb (680.4 kg) weak link used in the analysis and the effects of using a 600 lb weak link on fishing operations were considered and analyzed while promulgating the December 21, 2000, interim final rule (65 FR 80368). Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(a) and (c), no further analysis is required. Copies of the SAM EA/RIR are available upon request. (see **ADDRESSES.**)

#### List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 229 as follows:

**PART 229—AUTHORIZATION FOR  
COMMERCIAL FISHERIES UNDER THE  
MARINE MAMMAL PROTECTION ACT  
OF 1972**

1. The authority citation for part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. In § 229.32, paragraph (g)(3)(iii)(B) is revised and paragraph (g)(4)(i)(B)(2)(ii) is added to read as follows:

**§ 229.32 Atlantic large whale take  
reduction plan regulations.**

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(B) Allow fishing within a DAM zone with anchored gillnet and lobster trap gear, provided such gear satisfies the requirements specified in paragraphs (g)(4)(i)(B)(1) and (g)(4)(i)(B)(2). These requirements are in addition to requirements found in § 229.32 (b) through (d) but supercede them when the requirements in paragraphs

(g)(4)(i)(B)(1) and (g)(4)(i)(B)(2) are more restrictive than those in § 229.32 (b) through (d). Requirements for anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraph (g)(4)(i)(B)(1) and requirements for lobster trap gear in Offshore Lobster Waters, Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters are as specified in paragraph (g)(4)(i)(B)(2). Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for lobster trap gear in Southern Nearshore Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern

Nearshore Lobster Waters and Northern Inshore State Lobster Waters. Requirements for lobster trap gear in the Great South Channel Restricted Lobster Area (July 1 through March 31) are the same as requirements for Offshore Lobster Waters.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) \* \* \*

(ii) Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters areas buoy weak links- All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 600 lb (272.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

\* \* \* \* \*

[FR Doc. 03-4897 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 68, No. 42

Tuesday, March 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 03-013-1]

#### Availability of an Environmental Assessment for Field Testing Bursal Disease-Marek's Disease Vaccine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Bursal Disease-Marek's Disease Vaccine for use in chickens. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

**DATES:** We will consider all comments that we receive on or before April 3, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03-013-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 03-013-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03-013-1" on the subject line.

You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Michel Y. Carr, USDA, APHIS, VS, CVB-LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232-5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737-1231; phone (301) 734-8245; fax (301) 734-4314. For information regarding the environmental assessment and/or the risk analysis, contact Dr. Michel Y. Carr, USDA, APHIS, VS,

CVB-LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232-5785.

**SUPPLEMENTARY INFORMATION:** Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

*Requester:* Biomune Company.

*Product:* Bursal Disease-Marek's Disease Vaccine, Serotypes 2 and 3, Live Virus, Live Herpesvirus Vector, Code 1A88.R1.

*Field Test Locations:* Arkansas, California, Delaware, Georgia, Nebraska, Pennsylvania, and Texas.

The above mentioned product is a combination Bursal Disease-Marek's Disease Vaccine prepared using serotypes 2 and 3 Marek's disease virus. Serotype 3 Marek's disease virus has been genetically modified to express bursal disease virus antigens. The vaccine is for use in chickens as an aid in the prevention of disease caused by bursal disease virus, and serotypes 2 and 3 Marek's disease virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a final EA and finding of no significant impact (FONSI) and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

**Authority:** 21 U.S.C. 151–159.

Done in Washington, DC, this 26th day of February, 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–5010 Filed 3–3–03; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Madera County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of resource advisory committee meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, March 17, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: update on the RAC new committee members, revisit RAC FY 2003 proposals and updates of proposal information, accounting and follow up responsibilities for FY 2002 projects,

review Madera County RAC mission and clarify voting procedures.

**DATES:** The Madera Resource Advisory Committee meeting will be held Monday, March 17, 2003. The meeting will be held from 7 p.m. to 9 p.m.

**ADDRESSES:** The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

**FOR FURTHER INFORMATION CONTACT:**

Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: [dmartin05@fs.fed.us](mailto:dmartin05@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Update on the RAC new committee members; (2) revisit RAC FY 2003 proposals and updates of proposal information; (3) accounting and follow up responsibilities for FY 2002 projects; (4) review Madera County RAC mission and; (5) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 25, 2003.

**David W. Martin,**

*District Ranger.*

[FR Doc. 03–4978 Filed 3–3–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Grain Inspection, Packers and Stockyards Administration (GIPSA) intention to request an extension for and revision to a currently approved information collection related to the delivery of services conducted under the official inspection, grading, and weighing programs authorized under the United States Grain Standards Act and the Agricultural Marketing Act of 1946. This voluntary survey would give customers of the official inspection, grading, and weighing programs, who are primarily in the grain, oilseed, rice, lentil, dry pea, edible bean, and related agricultural commodity markets, an

opportunity to provide feedback on the quality of services they receive and will provide information on new services that they would like to receive. This feedback would assist GIPSA's Federal Grain Inspection Service (FGIS) to improve services and service delivery provided by the official inspection, grading, and weighing system.

**DATES:** Written comments must be submitted on or before May 5, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by electronic mail or Internet to: [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov). All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

**FOR FURTHER INFORMATION CONTACT:**

Gregory J. Hawkins, Public and Congressional Relations Staff, e-mail address: [gregory.j.hawkins@usda.gov](mailto:gregory.j.hawkins@usda.gov), telephone (202) 720–3553.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorize the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, GIPSA's FGIS offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. Under FGIS oversight, the official inspection, grading, and weighing programs is a public-private partnership including Federal, State, and private agencies and provides official inspection, grading, and weighing services to the domestic and export trade.

There are approximately 2,500 current users of the official inspection, grading, and weighing programs. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers, merchandisers, processors, exporters, and other financially interested parties. These customers request official services from an FGIS Field Office; delegated, designated, or cooperating

State office; or designated private agency office.

The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. To accomplish this goal and in accordance with Executive Order 12862, FGIS is seeking feedback from customers to evaluate the services provided by the official inspection, grading, and weighing programs.

**Title:** Survey of Customers of the Official Inspection, Grading, and Weighing Programs (Grain and Related Commodities).

**OMB Number:** 0580-0018.

**Expiration Date of Approval:** May 31, 2003.

**Type of Request:** Extension and revision of a currently approved information collection.

**Abstract:** The collection of information using a voluntary customer service survey will provide all paying customers of FGIS and the official inspection, grading, and weighing programs an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Customers will also have an opportunity to indicate what new or existing services they would use if such services were offered or available.

FGIS needs to have a more formal means of determining customers' expectations or the quality of service that is delivered. To collect this information, FGIS proposes to distribute, over a 3-year period, a voluntary customer service survey. The initial survey instrument will consist of nine questions. Subsequent survey instruments will be tailored to earlier responses. The information collected from the survey will allow FGIS to ascertain customers' satisfaction with existing services, compare results from year to year, and determine what new services customers desire. The customer service survey consists of one document

comprised of nine questions where customers assess the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Some examples of survey questions include the following: "I receive results in a timely manner," "Official results are accurate," and "Inspection personnel are knowledgeable." These survey questions will be assessed using a one to five rating scale with responses ranging from "strongly disagrees" to "strongly agrees" or "no opinion." Customers are also asked for which product they primarily request service, and what percentage of their product is officially inspected. There is also space available on the survey for the customer to provide a response to the following statement: "I would use the following new/existing service if they were offered/available."

By obtaining information from customers through a voluntary customer service survey, FGIS could continue to improve services and service delivery provided by the official inspection, grading, and weighing programs to meet or exceed customer expectations.

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 10 minutes (*i.e.*, 0.167 hours) per response.

**Respondents:** The primary respondents will be the direct paying customers of FGIS and the official inspection, grading, and weighing programs.

**FY 2003: Estimated Number of Respondents:** 1,875 (*i.e.*, 2,500 total customers times 75% response rate = 1,875).

**Frequency of Responses:** 1.

**Estimated Annual Burden:** 313 hours. (1,875 responses times 0.167 hours/response = 313 hours).

**FY 2004: Estimated Number of Respondents:** 1,875.

**Frequency of Responses:** 1.

**Estimated Annual Burden:** 313 hours.

**FY 2005: Estimated Number of Respondents:** 1,875.

**Frequency of Responses:** 1.

**Estimated Annual Burden:** 313 hours.

Copies of this information collection can be obtained from Tess Butler, Grain Inspection, Packers and Stockyards Administration, FGIS, at (202) 720-7486.

**Comments:** Comments are invited on: (a) Whether the collection of the information is necessary for the proper performance of the functions of FGIS, including whether the information will have a practical utility; (b) the accuracy of FGIS' estimate of the burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

Comments should be addressed to Tess Butler, as referenced above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 26, 2003.

**Donna Reifschneider,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 03-5011 Filed 3-3-03; 8:45 am]

**BILLING CODE 3410-EN-P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

#### LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 23, 2003-FEBRUARY 21, 2003

Firm name	Address	Date petition accepted	Product
Victoria Vogue, Inc .....	90 Southland Drive, Bethlehem, PA 18017.	02/07/03	Powder puffs, sponges, brushes, eye shadow applicators, bath sponges and other cosmetic and beauty accessories.
Hardinge, Inc .....	One Hardinge Drive, Elmira, NY 14902.	02/03/03	Metal cutting machine (CNC) tools (lathes/turning machines).
Lauraville Specialty Products .....	122 North Genesee Street, Geneva, NY 14456.	02/07/03	Encapsulated labels.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 23, 2003–FEBRUARY 21, 2003—  
Continued

Firm name	Address	Date petition accepted	Product
Magruder Color Co., Inc .....	11029 Newark Avenue, Elizabeth, NJ 07208.	02/03/03	Organic and fluorescent color pigments and printing ink vehicles.
NTR, Inc. dba Blue Water, Ltd .....	209 Lovvorn Road, Carrollton, GA 30177.	01/30/03	Recreational climbing rope.
House Manufacturing Co., Inc .....	3720 Hwy 1, Cherry Valley, AR 72324.	01/28/03	Equipment for wastewater treatment (irrigation), and aeration including pumps.
Laville Frames, Inc .....	8300 Madrid Avenue, Baton Rouge, LA 70814.	01/30/03	Wooden frames.
Infidel, Inc .....	1417 Roy Road, Bellingham, VA 98226.	02/04/03	Salmon.
Riggins Engineering, Inc .....	13932 Saticoy Street, Van Nuys, CA 91402.	02/11/03	Components of flight control systems.
A. Rafkin Company .....	1400 Sans Souci Parkway, Wilkes Barre, PA 18083.	02/07/03	Specialty locking bags used for cash management control and mail delivery.
Weiss-Aug Co., Inc .....	3 Merry Lane, East Hanover, NJ 07936.	02/07/03	Custom stamped and insert molded components of metal and plastic for the auto, telecommunications, medical and electronics industries.
Colonial Bronze Co., Inc .....	511 Winsted Road, Torrington, CT 06790.	02/14/03	Cabinet and appliance hardware—knobs, pulls and handles of bronze and brass.
Hansen Farms .....	Rt. 1, Box 134, Palacios, TX 77465 ..	02/14/03	Agricultural and aquaculture farming including catfish.
Jerry A. Yagie .....	P.O. Box 65, Perryville, AK 99648 ....	01/30/03	Salmon.
Dennis F. Shangan dba F/V Miranda Leigh.	P.O. Box 3104, Soldotna, AK 99669	12/11/02	Salmon.
Raechel Hinderer dba F/V Miranda Leigh.	P.O. Box 13, Chignik, AK 99564 .....	01/30/03	Salmon.
Archie A. Kalmakoff .....	P.O. Box 69, Perryville, AK 99648 ....	01/30/03	Salmon.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: February 25, 2003.

**Anthony J. Meyer,**

*Coordinator, Trade Adjustment and Technical Assistance.*

[FR Doc. 03-4979 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-24-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1270]

#### Grant of Authority for Subzone Status, J. Ray McDermott, Inc., (Offshore Drilling/Production Platforms) Amelia, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, an application from the Port of South Louisiana Commission, grantee of FTZ 124, for authority to establish special-purpose subzone status for the offshore

drilling/production platform manufacturing facilities of J. Ray McDermott, Inc., in Amelia, Louisiana, was filed by the Board on November 12, 2002, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 51-2002, 67 FR 70046, 11-20-2002); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

*Now, therefore*, the Board hereby grants authority for subzone status at the offshore drilling/production platform manufacturing facilities of J. Ray McDermott, Inc. (JRM), in Amelia, Louisiana (Subzone 124I), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions: (1) Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill; and, (2) J. Ray McDermott, Inc., shall annually advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that

the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 21st day of February 2003.

**Faryar Shirzad,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 03-5055 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1269]

#### Approval of Request for Manufacturing Authority Within Foreign-Trade Zone 46, Cincinnati, OH (Automobile Transmissions)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for “ \* \* \* the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, has requested authority under 15 CFR 400.31 of the Board's regulations on behalf of ZF Batavia, LLC to manufacture automobile transmissions under zone procedures within Site 3 of FTZ 46 (filed 3-20-2002, FTZ Docket 18-2002);

*Whereas*, notice inviting public comment was given in **Federal Register** (67 FR 15527, 4/2/2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

*Now, therefore*, the Board hereby approves the request subject to the Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 21st day of February 2003.

**Faryar Shirzad,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 03-5054 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-822]

#### Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 4, 2003.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of corrosion-resistant carbon steel flat products from Canada until no later than September 1, 2003. This review covers the period August 1, 2001, through July 31, 2002. The extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).

#### FOR FURTHER INFORMATION CONTACT:

Mark Hoadley or Julio A. Fernandez, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482-3148 or (202) 482-0961, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Commerce (the Department) received a request on August 30, 2002, from Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (petitioners) for an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada, with respect to Stelco, Inc. (Stelco) and Dofasco, Inc. (Dofasco). On September 25, 2002, the Department published a notice of initiation of this administrative review for the period of August 1, 2001, through July 31, 2002 (67 FR 60210).

##### Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of analyzing Stelco and Dofasco's cost calculations, and Stelco's inputs obtained from affiliated parties, it is not practicable to complete this review by the current deadline of May 3, 2003.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than August 31, 2003. However, as this date falls on a weekend, the due date will fall on the next business day, September 1, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance to sections 751(a)(1) and 777(I)(1) of the Act.

Dated: February 25, 2003.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 03-5056 Filed 3-3-02; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No. 021127288-2288-01]

#### Proposed Withdrawal Of Seventeen (17) Federal Information Processing Standards (FIPS)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; Request for comments.

**SUMMARY:** The National Institute of Standards and Technology (NIST) proposes to withdraw seventeen (17) Federal Information Processing Standards (FIPS) from the FIPS series. Some of these FIPS adopt voluntary industry standards for Federal government use, but the FIPS documents have not been updated to reference current or revised voluntary industry standards. Other FIPS adopt data standards that are developed and used by other Federal government agencies. These FIPS have not been updated to reflect changes and modifications in the data representations. The remaining FIPS provide advisory guidance to Federal agencies on computer security issues. This advisory guidance, which has no requirements for compulsory and binding use, has been updated by NIST and issued in more recent recommendations and publications.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is

given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

**DATES:** Comments on the proposed withdrawal of these FIPS must be received on or before June 2, 2003.

**ADDRESSES:** Written comments concerning the withdrawal of these FIPS should be sent to: Information Technology Laboratory, ATTN: Proposed Withdrawal of 17 FIPS, Mail Stop 8930, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. Electronic comments should be sent to: [fips.comments@nist.gov](mailto:fips.comments@nist.gov).

Information about the FIPS is available on the NIST web pages: <http://www.itl.nist.gov/fipspubs/index.htm>.

Comments received in response to this notice will be published electronically at <http://csrc.nist.gov/publications/fips/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley M. Radack, telephone (301) 975-2833, MS 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899 or via e-mail at [shirley.radack@nist.gov](mailto:shirley.radack@nist.gov).

**SUPPLEMENTARY INFORMATION:** Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995, Public Law 104-113, to use technical standards that are developed in voluntary consensus standards bodies. Consequently, there no longer is a need for FIPS that duplicate voluntary industry standards.

The following Federal Information Processing Standards (FIPS) Publications are proposed for withdrawal from the FIPS series:

- FIPS 8-6, Metropolitan Areas (Including MSAs, CMSAs, PMSAs, and NECMAs)
- FIPS 9-1, Congressional Districts of the U.S.
- FIPS 31, Guidelines for Automatic Data Processing Physical Security and Risk Management
- FIPS 48, Guidelines on Evaluation of Techniques for Automated Personal Identification
- FIPS 55-3, Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States, Puerto Rico, and the Outlying Areas
- FIPS 66, Standard Industrial Classification (SIC) Codes
- FIPS 73, Guidelines for Security of Computer Applications
- FIPS 83, Guideline on User Authentication Techniques for Computer Network Access Control
- FIPS 87, Guidelines for ADP Contingency Planning

FIPS 92, Guideline for Standard Occupational Classification (SOC) Codes

FIPS 95-2, Codes for the Identification of Federal and Federally Assisted Organizations

FIPS 102, Guideline for Computer Security Certification and Accreditation

FIPS 112, Password Usage

FIPS 127-2, Database Language SQL (ANSI X3.135-1992)

FIPS 159, Detail Specification for 62.5-um Core Diameter/125-um Cladding Diameter Class 1A Multimode, Graded-index Optical Waveguide Fibers

FIPS 171, Key Management Using ANSI X9.17

FIPS 173-1, Spatial Data Transfer Standard.

The FIPS are being proposed for withdrawal because they are obsolete, or have not been updated to adopt current voluntary industry standards, current federal data standards, or current good practices for computer security. Withdrawal of these FIPS does not lessen agency responsibilities to use current voluntary industry standards and available good practices in their acquisition and management activities. The Information Technology Management Reform Act of 1996 (Division E of Public Law 104-106) and Executive Order 13011 emphasize agency management of information technology and Government-wide interagency support activities to improve productivity, security, interoperability, and coordination of Government resources.

Withdrawal means that these FIPS would no longer be part of a subscription service that is provided by the National Technical Information Service. NIST will continue to provide relevant information on standards and guidelines by means of electronic dissemination methods, and will keep references to the withdrawn FIPS on its FIPS Web pages.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce, pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104-106), the Computer Security Act of 1987 (Pub. L. 100-235), and Appendix III to Office of Management and Budget Circular A-130.

*Classification: Executive Order 12866:* This notice has been determined not to be significant for the purposes of Executive Order 12866.

Dated: February 26, 2003.

**Arden L. Bement, Jr.,**  
Director.

[FR Doc. 03-4936 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-CN-P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Visiting Committee on Advanced Technology

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, March 18, 2003, from 8:25 a.m. to 5 p.m. and Wednesday, March 19, 2003, from 9 a.m. to noon. The Visiting Committee on Advanced Technology is composed of 14 members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST update; an update on NIST Customer Liaison Function/Industrial Liaison Office, Measuring NIST's Economic Impacts, a Homeland Security update, laboratory tours of Homeland Security projects, Science and Technology in the FY 2004 Budget: Congressional and Administration Priorities and Implications of Congressional and Administration Science and Technology Priorities for NIST. Discussions scheduled to begin at 4 p.m. and to end at 5 p.m. on March 18, 2003, and to begin at 9 a.m. and to end at noon on March 19, 2003, on the NIST budget, planning information and feedback sessions will be closed. Agenda may change to accommodate Committee business. Final agenda will be posted on Web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address



and phone number to Carolyn Peters no later than Thursday, March 13, 2003, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975-5607.

**DATES:** The meeting will convene March 18, 2003, at 8:25 a.m. and will adjourn at noon on March 19, 2003.

**ADDRESSES:** The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

**FOR FURTHER INFORMATION CONTACT:** Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899-1004, telephone number (301) 975-5607.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 25, 2003, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: February 27, 2003.

**Arden L. Bement, Jr.,**

*Director.*

[FR Doc. 03-5001 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022603A]

#### Proposed Information Collection; Comment Request; Gulf of Mexico Shrimp Mandatory Vessel Owner Economic Data Collection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 5, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Travis, Department of Commerce, NOAA, National Marine Fisheries Service, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2439, (727) 570-5335.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

NOAA proposes to collect census-level information on fishing vessel and gear characteristics in the Gulf of Mexico shrimp fishery (Exclusive Economic Zone only) to conduct economic analyses that will improve fishery management decision-making in that fishery; satisfy NOAA's legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performance measures in the National Marine Fisheries Service Strategic Operating Plans. Used in conjunction with landings and price data already being collected in this fishery as part of the dealer reporting program, and economic data to be collected under a voluntary program (implementation of which is expected later this year), this data will be used to properly describe the fishery and its operations. The collected information will also help to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations.

##### II. Method of Collection

The vessel and gear characterization form will be mailed to all vessel owners who either currently have or who apply for Gulf of Mexico federal shrimp permits. Vessel owners will be asked for information about the nature and extent of their operations in the Gulf shrimp fishery, as well the types of electronic equipment and gear they use to conduct this fishery. Submission of a completed

vessel and gear characterization form would be mandatory.

#### III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,250.

*Estimated Time Per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 1,750.

*Estimated Total Annual Cost to Public:* \$0. (Costs exclude valuation of respondents' time.)

#### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-5046 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022603B]

#### Proposed Information Collection; Comment Request; Gulf of Mexico Red Snapper Individual Fishing Quota Referendum Data Collection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 5, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Phil Steele, Department of Commerce, NOAA, National Marine Fisheries Service, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2439, (727) 570-5305.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Abstract**

This data collection is needed for the Secretary of Commerce (Secretary) to properly implement the referendum procedures specified in Section 407(c) of the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*). The Act provides that on or after October 1, 2000, the Gulf of Mexico Fishery Management Council (Council) may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota (IFQ) program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class. These actions can only take place if the preparation of such plan, amendment, or regulation is approved in a referendum, and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum.

Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date (i.e., September 1, 1996) may vote in the referendums.

##### **II. Method of Collection**

The Secretary, at the request of the Council, will conduct these referendums. The Secretary has sufficient data, collected under OMB approval 0648-0205, needed to contact persons who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date). However, the Secretary does not have such data on the vessel captains who harvested red snapper in a commercial fishery using such endorsement in each specified fishing season. Therefore, the Secretary will use several communication methods to attempt to identify such captains and make them aware of the referendum procedures. One possible communication method that involves data collection would be a request for detailed information from persons with a vessel permit with a red snapper endorsement, regarding vessel captains who harvested red snapper using such endorsement in each specified fishing season.

Prior to each referendum, the Secretary, in consultation with the Council, shall (a) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and (b) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program. Submission of the paper questionnaires would be voluntary.

##### **III. Data**

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Response:* 10 minutes for a response to an initial referendum on preparation; 20 minutes for a response to a subsequent referendum; and 10 minutes per response for any information request regarding vessel captains.

*Estimated Total Annual Burden Hours:* 102.

*Estimated Total Annual Cost to Public:* \$122. (Costs exclude valuation of respondents' time.)

##### **IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-5047 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

[I.D. 013003B]

##### **Marine Mammals: Final Environmental Assessment of Issuing a Bowhead Whale Subsistence Quota to the Alaska Eskimo Whaling Commission for the Years 2003 through 2007**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability.

**SUMMARY:** NMFS announces the availability of an Environmental Assessment (EA), in accordance with the National Environmental Policy Act (NEPA), to assess the impacts of issuing the International Whaling Commission (IWC) subsistence quota for bowhead whales to the Alaska Eskimo Whaling Commission (AEWC) for the years 2003 through 2007. NMFS has identified a preferred alternative in the EA that will grant the AEWC the IWC quota of 255 landed bowhead whales, with an annual strike quota of 67 bowhead whales per year for the years 2003 through 2007, where no more than 15 unused strikes are added to the strike quota for any one year.

**ADDRESSES:** Copies of the EA may be obtained via the Internet (see Electronic Access). Copies of the EA may be requested by writing to Gale Heim,

NOAA/NMFS, Office of Protected Resources, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Mark the outside of the envelope with "Request for Bowhead EA."

**FOR FURTHER INFORMATION CONTACT:** Chris Yates or Winnie Chan, 301-713-2322.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Copies of the EA may be obtained over the Internet at the Office of Protected Resources Marine Mammal website under "Quick Information Links" at [http://www.nmfs.noaa.gov/prot\\_res/overview/mm.html](http://www.nmfs.noaa.gov/prot_res/overview/mm.html). The link is titled "Bowhead Whale Environmental Assessment".

**Background**

At the 5<sup>th</sup> Special Meeting of the IWC held in October, 2002 the Commission approved a 5-year aboriginal subsistence quota for the take of Western arctic bowhead whales. The quota allows for a combined total of up to 280 whales to be landed in the years 2003 through 2007 by Alaskan Eskimos and Russian natives. For each of these years, the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year shall be carried forward and added to the strike quota of any subsequent year, provided that no more than 15 strikes shall be added to the strike quota for any one year.

The basis for the quota was a joint request by the Russian Federation and the United States for 280 whales (255 for Alaska Eskimos and 25 for Russian natives) over a 5-year period. The annual strike limits and quotas for whales are determined at the beginning of each year after consultation with the Russian government.

At the 54<sup>th</sup> annual meeting of the IWC, held in May, 2002 the Scientific Committee reiterated its previous advice for the Bering-Chukchi-Beaufort Seas stock of bowhead whales. That is, it is very likely that a catch limit of 102 whales or less would be consistent with the requirements under IWC regulation.

The International Convention for the Regulation of Whaling, under which the IWC operates, is implemented domestically through the Whaling Convention Act (WCA). Under the WCA, NMFS issues a share of the IWC bowhead quota to the AEWG.

Alaska Eskimos have been taking bowhead whales for at least 2,000 years. Alaska Native subsistence hunters take less than one percent of the population of bowhead whales per year. Since 1977, the number of takes has ranged between 14 and 75 per year.

NEPA requires that Federal agencies conduct an environmental analysis of the effect of their proposed actions on the environment. Although all quotas under the WCA are issued on an annual basis, NMFS evaluated the effects of issuing them over a 5-year period. A draft EA was distributed for public comment on December 9, 2002. The EA analyzed four alternatives:

*Alternative 1* - Grant the AEWG a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no unused strikes are added to the strike quota for any one year.

*Alternative 2* - Grant the AEWG a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year.

*Alternative 3* - Grant the AEWG a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where, for unused strikes, up to 50 percent of the annual strike limit is added to the strike quota for any one year.

*Alternative 4* (No Action) - Do not grant the AEWG a quota.

After reviewing and addressing the comments received, NMFS selected Alternative 2 as the preferred alternative. NMFS issued a final EA and Finding of No Significant Impact on February 23, 2003. The Final EA was prepared in accordance with NEPA, implementing regulations at 40 CFR parts 1500 through 1508, and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216-6.

Dated: February 26, 2003.

**Stephen L. Leathery,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03-5045 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 022603C]

**Mid-Atlantic Fishery Management Council; Public Meetings**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) and its Research Set Aside (RSA) Committee and its Executive Committee will hold a public meeting.

**DATES:** The meetings will be held on Tuesday, March 18, through Thursday, March 20, 2003. On Tuesday, March 18, there will be a Research Set-Aside (RSA) Workshop from noon until 5 p.m. There will be a Dogfish Scoping meeting from 7 pm to 8:30 p.m. On Wednesday, March 19, the Executive Committee will meet from 8 a.m. to 9 a.m. The Council will meet from 9 a.m. to 11 a.m. The Council will tour the U.S. Coast Guard Museum and hear a presentation on Homeland Defense from 11 a.m. to 1:15 p.m. The Council will meet from 1:30 p.m. to 4:30 p.m. The Council will then visit the Virginia Marine Science Museum from 5 p.m. to 8 p.m. On Thursday, March 20, the Council will meet from 8 a.m. until noon.

**ADDRESSES:** This meeting will be held at the Sheraton Oceanfront Hotel, 36th Street and Atlantic Avenue, Virginia Beach, VA; telephone: 757-425-9000 or 800-325-3535.

*Council address:* Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302-674-2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:** The Council and NMFS will hold a collaborative workshop from noon to 5 p.m. on March 18, 2003 to discuss the Council's RSA program.

The RSA program is carried out through the cooperation of the Council, NMFS, and the Atlantic States Marine Fisheries Commission. It provides a mechanism to fund research relevant to the Council's and Commission's fishery management plans and to compensate vessels through the sale of fish harvested under specially designated RSA quotas. Research projects have been funded through the RSA in 2002 and 2003, and a notice for solicitation of 2004 projects has recently been published in the **Federal Register** (68, FR 3864, 1/27/2003). The NMFS is currently soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, *Loligo* squid, *Illex* squid, Atlantic mackerel, butterfish, and bluefish fisheries. While the tilefish fishery is part of the RSA program, the Council has voted to set the tilefish RSA quota to zero until a stock assessment has been completed. All research proposals

to be considered under this solicitation must be received by March 28, 2003.

The purpose of the workshop is to receive public input from RSA project participants and the general public on how to improve the RSA program, and to inform the public and potential RSA quota recipients about the opportunities and requirements of the RSA program. Main agenda items for the workshop will be:

(1) Welcome and Description of the RSA Program, (2) The RSA 2004 Request for Proposals (RFP) Solicitation, (3) The RSA Grants Review/Approval Process, (4) Overview and Discussion of the Exempted Fishing Permit Process Requirements RSA Recipients Must Comply With, (5) Public Input from RSA Project Participants and General Public with Suggestions on How to Improve the RSA Program, (6) Integration of RSA Projects with NMFS Northeast Fisheries Science Center Programs, (7) Integration of RSA Project Findings Into the Fisheries Management Process.

Additional agenda items for the Council's committees and the Council itself are: Conduct a scoping meeting for Amendment 1 to the Dogfish Fishery Management Plan (consider, among other management measures, the following items for inclusion in Amendment 1: define a rebuilding biomass target for Bmsy, establish rebuilding timeframe consistent with Section 304(e) of the Magnuson-Stevens Act (MSA), address bycatch/discard issues, and address different allocation processes; the Executive Committee will discuss potential Council actions regarding MSA and Marine Mammal Protection Act (MMPA) Reauthorizations; hear a presentation on the peer review and stock assessment workshop process; hear a NMFS presentation on initiative to change recreational fishing data collection (report on the new coastwide methodology to collect catch and effort data from the for-hire recreational fleet and discuss how new system would affect Marine Recreational Fishery Statistics Survey (MRFSS); review and discuss directions and priorities for 2003 and 2004 for summer flounder, scup, and black sea bass; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal

Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 26, 2003.

**Theophilus R. Brainerd,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03-5044 Filed 3-3-03; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice; Information Collection 3038-0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

**DATES:** Comments must be submitted on or before April 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Linda Mauldin at CFTC, (202) 418-5120; FAX: (202) 418-5524; e-mail: [Imauldin@cftc.gov](mailto:Imauldin@cftc.gov) and refer to OMB Control No. 3038-0043.

#### SUPPLEMENTARY INFORMATION:

**Title:** Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB Control No. 3038-0043. This is a request for

extension of a currently approved information collection.

**Abstract:** 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. section 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2002 (67 FR 68995).

**Burden statement:** The respondent burden for this collection is estimated to average 1.42 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transit or otherwise disclose the information.

**Respondents/Affected Entities:** 22.

**Estimated number of responses:** 89.

**Estimates total annual burden on respondents:** 126 hours.

**Frequency of collection:** on occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038-0043 in any correspondence.

Linda Mauldin, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs,

Office of Management and Budget,  
Attention: Desk Office for CFTC, 725  
17th Street, Washington, DC 20503.

Issued in Washington, DC on February 26,  
2003.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 03-5003 Filed 3-3-03; 8:45 am]

BILLING CODE 6351-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Collection of Information; Comment Request—Safety Standard for Cigarette Lighters

**AGENCY:** Consumer Product Safety  
Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Cigarette Lighters (16 CFR part 1210). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

**DATES:** The Office of the Secretary must receive written comments not later than May 5, 2003.

**ADDRESSES:** Written comments should be captioned "Cigarette Lighters" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504-0127 or by e-mail at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1210, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504-7671.

**SUPPLEMENTARY INFORMATION:** In 1993, the Commission issued the Safety Standard for Cigarette Lighters (16 CFR

Part 1210) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard contains performance requirements for disposable and novelty lighters that are intended to make cigarette lighters subject to the standard resist operation by children younger than five years of age.

#### A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms "establish and maintain" records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for cigarette lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter in commerce. These regulations also require manufacturers, importers, and private labelers of disposable and novelty lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR Part 1210, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of disposable and novelty lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by

resisting operation by young children. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations for cigarette lighters under control number 3041-0116. OMB's most recent extension of approval will expire on April 30, 2003. The Commission proposes to request an extension of approval without change for these collection of information requirements.

#### B. Estimated Burden

The cost of the rule's testing, reporting, recordkeeping, and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain and submit records to CPSC. There are an estimated 60 firms involved. Each of the 60 affected firms are expected to test an average of one to two new models of lighters each year, for a total of 60-120 responses. Testing of two lighters is expected to take 175 hours, therefore, 60 firms times 175 hours equals 10,500 total hours requested. Many firms' submissions rely on previous testing (16 CFR 1210.14) of lighters. Thus, they may not need to do new child testing for lighters to qualify for importation.

The cost of the rule's testing, reporting, recordkeeping and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain, and submit records to CPSC. Testing costs are estimated to total roughly \$15,000 per test series. If each of the 60 affected firms tests an average of one or two new models of lighters each year, total annual testing costs may be \$900,000 to \$1.8 million. The Commission staff has estimated record preparation at approximately \$42.32 per hour, on the average. For an average of roughly 20 to 40 hours per firm in a typical year, the total records preparation and submission costs for all 60 affected firms is approximately \$51,000 to \$102,000 per year. Total industry testing and administrative costs are therefore approximately \$951,000 to \$1.9 million per year. Total burden hours for testing and recordkeeping, using the two model per firm figures, would be 10,540 (10,500 for testing plus 40 for recordkeeping).

**C. Request for Comments**

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 26, 2003.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 03-5037 Filed 3-3-03; 8:45 am]

BILLING CODE 6355-01-P

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02-2]

**Matter of Daisy Manufacturing Co., d/b/a Daisy Outdoor Products, 400 West Stribling Drive, Rogers, AK 72756; Final Prehearing Conference**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of final prehearing conference.

**DATES:** This notice announces the final prehearing conference to be held in the matter of Daisy Manufacturing Company on April 21, 2003 at 10 a.m.

**ADDRESSES:** The final prehearing conference will be in room 410 of the Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:**

Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Washington, DC; telephone (301) 504-7923; telefax (301) 504-0127.

**SUPPLEMENTARY INFORMATION:** This public notice is issued pursuant to 16 CFR 1025.21(c) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing

conference will be held in an administrative proceeding under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064, and section of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1274, captioned CPSC Docket No. 02-2, In the Matter of Daisy Manufacturing Company doing business as Daisy Outdoor Products. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. At this time, the Final Prehearing Conference is planned to be conducted by telephone. Those members of the public attending the conference will be able to listen to the conference, except for such portions, if any, which require that the public be excused. It is also possible that last minute issues may require that the parties' representatives attend the Conference in person.

The public is referred to 16 CFR 1025.21(a) for identification of the issues to be raised at the conference and is advised that the dates, times and places for the hearing also will be noted at this conference.

As stated in the **Federal Register** Notice announcing the First Prehearing Conference, substantively, the issues being litigated in this proceeding continue to include: Whether certain identified models of the Daisy Powerline Airgun, designed to shoot BBs or pellets, contain defects which create a substantial product hazard defect in that, allegedly, BBs can become lodged within a "virtual magazine," or fail to feed into the firing chamber, with the consequence that one may fire or shake the gun without receiving any visual or audible indication that it is still loaded. Consequently, the complaint asserts that these alleged problems can lead consumers to erroneously believe that the gun is empty and that such phenomena mean that the gun is "defective" within the meaning of section 15 of the CPSA, 15 U.S.C. 2064 and section 15 of the FHSA, 15 U.S.C. 1274.

The Complaint further alleges that the gun's design, by making it difficult to determine when looking into the loading port whether a BB is present, constitutes a "defect" under the CPSA and the FHSA and presents a "substantial product hazard," creating a substantial risk of injury to consumers, within the meaning of section 15(a)(2), of the CPSA, 15 U.S.C. 2064(a)(2), and presents a substantial risk of injury to children under sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2). The public should continue to be mindful that these are allegations

only and that the CPSC staff bears the burden of proof in establishing any violations. Should these allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that these products present a substantial product hazard and present a substantial risk of injury to children and that public notification of such hazard and risk of injury be made pursuant to section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: February 27, 2003.

**Todd A. Stevenson,**  
*Secretary.*

[FR Doc. 03-5038 Filed 3-3-03; 8:45 am]

BILLING CODE 6355-01-M

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Strategic Plan Review

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation") announces a request for comments concerning its strategic plan. To comply with the Government Performance and Results Act (GPRA), the Corporation must revise its strategic plan by September, 2003. In making revisions, the Corporation seeks input from organizations and individuals interested in helping to define the Corporation's mission, goals, and strategies, including organization and management, to support a culture of citizenship, service, and responsibility in America. Final approval of the strategic plan rests with the Corporation's Board of Directors.

In addition to seeking input through this notice, the Corporation will hold a series of focus groups, meetings, and discussions with organizations and individuals interested in the Corporation. For further background information about the Corporation, you should visit our Web site at <http://www.cns.gov>. You may access the existing strategic plan at <http://www.cns.gov/about/1997-2002.pdf>.

**DATES:** The deadline for submitting comments is May 1, 2003.

**ADDRESSES:** You may send any comments to Ms. Winsome Packer at [wpacker@cns.gov](mailto:wpacker@cns.gov), or to the following address: Corporation for National and Community Service, Office of Research and Policy Development, Attn: Ms.

Winsome Packer, 1201 New York Avenue, NW., Washington, DC 20525.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this notice, you may contact: Ms. Winsome Packer at (202) 606-5000, ext. # 498, or [wpacker@cns.gov](mailto:wpacker@cns.gov). The TDD number is (202) 565-2799.

Dated: February 25, 2003.

**David Reingold,**

*Director, Research and Policy Development.*

[FR Doc. 03-4937 Filed 3-3-03; 8:45 am]

**BILLING CODE 6050--\$-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0152]

#### **Federal Acquisition Regulation; Information Collection; Service Contracting**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0152).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting. This OMB clearance expires on May 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 5, 2003.

**ADDRESSES:** Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Julia Wise, Acquisition Policy Division, GSA, 208-1168.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Purpose**

This FAR requirement implements the statutory requirements of sec. 834, Public Law 101-510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at \$100,000 or more. This permits government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

##### **B. Annual Reporting Burden**

*Number of Respondents:* 19,906

*Responses Per Respondent:* 1

*Annual Responses:* 19,906

*Average Burden Per Response:* 30 minutes

*Total Burden Hours:* 9,953

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0152, Service Contracting, in all correspondence.

Dated: February 26, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03-4946 Filed 3-3-03; 8:45 am]

**BILLING CODE 6820-EP-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0076]

#### **Federal Acquisition Regulation; Information Collection; Novation/ Change of Name Requirements**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0076).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning novation/change of name requirements. This OMB clearance expires on May 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 5, 2003.

**ADDRESSES:** Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Acquisition Policy Division, GSA (202) 501-3775.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Purpose**

When a firm performing under government contracts wishes the government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the government.

##### **B. Annual Reporting Burden**

*Respondents:* 1,000

*Responses Per Respondent:* 1

*Annual Responses:* 1,000

*Hours Per Response:* .458

*Total Burden Hours:* 458

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0076, Novation/Change of Name Requirements, in all correspondence.



Dated: February 26, 2003.

**Ralph J. Destefano,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 03-4947 Filed 3-3-03; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,191,744 entitled "Probe movement system for spherical near-field antenna testing" and U.S. Patent No. 6,354,167 entitled "Scara type robot with counterbalanced arms".

**ADDRESSES:** Requests for copies of the inventions cited should be directed to the Naval Surface Warfare Center, Crane Div., Code OCF, Bldg 64, 300 HWY 361, Crane, IN 47522-5001 and must include the patent number.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div., Code OCF, Bldg 64, 300 HWY 361, Crane, IN 47522-5001, Telephone (812) 854-1130. An application for license may be downloaded from: [http://www.crane.navy.mil/foia\\_pa/CranePatents.asp](http://www.crane.navy.mil/foia_pa/CranePatents.asp).

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: February 26, 2003.

**R. E. Vincent II**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 03-4981 Filed 3-3-03; 8:45 am]

BILLING CODE 3810-FF-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 3, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address [Lauren.Wittenberg@omb.eop.gov](mailto:Lauren.Wittenberg@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 26, 2003.

**John D. Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

*Office of Educational Research and Improvement*

**Type of Review:** Revision of a currently approved collection.

**Title:** Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System (KI).

**Frequency:** Annually.

**Affected Public:**

Not-for-profit institutions (primary). Businesses or other for-profit. State, Local, or Tribal Gov't, SEAs or LEAs.

**Reporting and Recordkeeping Hour Burden:** Responses: 63550; Burden Hours: 183080.

**Abstract:** IPEDS is a system of surveys designed to collect basic data from approximately 9,600 postsecondary

institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the "redesign of relevant data systems to improve the usefulness and timeliness of the data collected by such systems." As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system and to concentrate on those institutions that participate in Title IV federal student aid programs; other institutions may participate on a voluntary basis.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or directed to her e-mail address [Vivian.Reese@ed.gov](mailto:Vivian.Reese@ed.gov). Requests may also be faxed to 202-708-9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address [Katrina.Ingalls@ed.gov](mailto:Katrina.Ingalls@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 03-4956 Filed 3-3-03; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Energy.

**ACTION:** Agency Information Collection Extension.

**SUMMARY:** The Department of Energy (DOE) has submitted information collection package 1910-5112, Chronic Beryllium Disease Prevention to the Office of Management and Budget (OMB) for extension under the Paperwork Reduction Act of 1995. The package covers the collection of information from DOE and DOE contractors that are subject to the Department's Chronic Beryllium Disease Prevention Program (10 CFR part 850). The regulations contained in the Chronic Disease Prevention Program have been promulgated under authority in the Atomic Energy Act of 1954, and the Department of Energy Organization Act.



**DATES:** Comments regarding this collection of information should be sent on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3087. (Also, please notify the DOE contact listed in this notice.)

**ADDRESSES:** Address comments to DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, Docket Library, Room 10102, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. Comments should also be addressed to the Records Management Division, Office of the Chief Information Officer, at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Susan L. Frey, Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer, IM-11/GTN Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585-1290, (301)-903-3666, or E-mail [susan.frey@hq.doe.gov](mailto:susan.frey@hq.doe.gov). (Also notify Jacqueline D. Rogers, Office of Environment, Safety and Health, EH-5/270CC, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585-1290 (301-903-5684).)

**SUPPLEMENTARY INFORMATION:** (1) *Current OMB Control Number:* 1910-5112 (2) *Package Title:* Chronic Beryllium Disease Prevention Program (3) *Summary:* A three-year extension is requested to provide DOE employers with the information needed to manage chronic beryllium disease prevention programs, provide information to employees, and permit oversight of their programs by DOE management. (4) *Purpose:* This collection provides the Department with the information needed to reduce the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors; minimize the levels and potential exposure to beryllium; and provide medical surveillance to ensure early detection of disease. (5) *Type of Respondents:* DOE and DOE contractor employers of workers exposed or potentially exposed to beryllium; current workers. (6) *Number of respondents:* 1,703 annually; (7) *Total annual burden hours:* 32,952 hours.

*Statutory Authority:* Atomic Energy Act of 1954, 42 U.S.C. 2201.

Issued in Washington, DC on February 25, 2003.

**Susan L. Frey,**

*Director, Records Management, Office of Business and Information Management, Office of the Chief Information Officer.*

[FR Doc. 03-4992 Filed 3-3-03; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

**[Docket No. EA-196-B]**

### Application To Export Electric Energy; Minnesota Power, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Minnesota Power, Inc. (Minnesota Power) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before April 3, 2003.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202-586-4708 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 11, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA-196 authorizing Minnesota Power to transmit electric energy from the United States to Canada. Minnesota Power is a Minnesota corporation that owns electric generation and transmission facilities and sells and distributes electricity within its northern Minnesota service territory. That two-year authorization expired on February 11, 2001.

On March 2, 2001, Minnesota Power filed an application with FE for renewal of that export authority for a two-year term. That authorization was issued on May 23, 2001.

On February 3, 2003, Minnesota Power applied for renewal of its

authorization to export electric energy to Canada for a five year term beginning upon the expiration of its current authorization. Minnesota Power proposes to arrange for delivery of electric energy to Canada over transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, International Transmission, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Inc., Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company.

The electric energy that Minnesota Power proposes to export will be either firm or interruptible. The exported energy will be purchased from other entities voluntarily and, therefore, will be surplus to the needs of the selling entities.

**Procedural Matters:** Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Minnesota Power request to export to Canada should be clearly marked with Docket EA-196-B. Additional copies are to be filed directly with Steven W. Tyacke, Esq., Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802-2092.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had been granted in FE Order No. EA-196. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-196 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select "Electricity," from the Regulatory Info menu, and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on February 21, 2003.

**Anthony Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 03-4997 Filed 3-3-03; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 03-19; Research in Innovative Approaches to Fusion Energy Sciences

**AGENCY:** Department of Energy.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), announces its interest in receiving grant applications for research in innovative approaches to fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in Fiscal Year 2004 should submit in response to this Notice.

Specifically, projects funded under this Notice should be responsive to the MFE Goal 2 of the Report of the Integrated Program Planning Activity for the DOE OFES Program (IPPA 2000), Report DOE/SC-0028 (<http://vlt.ucsd.edu/IPPAFinalDec00.pdf>). The Goal calls for resolving outstanding scientific issues and establishing reduced-cost paths to more attractive fusion energy systems by investigating a broad range of innovative magnetic confinement configurations, as recommended in the report on "Priorities and Balance within the Fusion Energy Sciences Program" by the Fusion Energy Sciences Advisory Committee (FESAC), September 1999 (<http://vlt.ucsd.edu/revisedpanel.pdf>). Proposals exploring new and innovative approaches for creating compact plasmas with high  $\beta$  and high temperatures in pulsed or steady state, and for the active control of magnetized plasmas are particularly welcome. Research involving highly innovative experimental approaches to improve our understanding of magnetized plasmas, and exploration of highly innovative plasma operations in support of proof-of-principle and higher performance plasmas in support of the above Goal, may also be considered. Although the main thrust of the research efforts funded under this Notice is experimental, consideration will also be given to applications that are directed at scientific assessment of new concepts

and approaches that are not ready for experimental investigation.

Applications for research on existing large facilities, or initiatives in Inertial Fusion Energy should not be submitted in response to this Notice.

Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their previous application(s) which received funding. A Principal Investigator may submit only one application under this Notice.

OFES may also solicit proposals from time to time under separate announcements of Initiatives to support coordinated, goal-directed community efforts. These Initiatives will be funded to achieve specific programmatic and scientific aims and will be subject to requirements that are different from those of this Notice. Such grants, if funded, will be subject to periodic reviews of progress.

**DATES:** To permit timely consideration for awards early in Fiscal Year 2004, applications submitted in response to this Notice must be received by DOE no later than 4:30 p.m., May 1, 2003. Electronic submission of formal applications in PDF format is required using a minimum number of files.

Applicants are requested to submit a letter-of-intent by April 4, 2003, which includes the title of the application, the name of the Principal Investigator(s), the requested funding, and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. The letters-of-intent should be sent by E-mail to the following E-mail address: [john.sauter@science.doe.gov](mailto:john.sauter@science.doe.gov) and the Subject line should state: Letter-of-intent regarding Program Notice 03-19.

**ADDRESSES:** Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: <http://e-center.doe.gov/>. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this Notice that provide the appropriate forms in PDF

fillable format that are to be submitted through IIPS using a minimum number of files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: [HelpDesk@pr.doe.gov](mailto:HelpDesk@pr.doe.gov), or you may call the help desk at: (800) 683-0751. Further information on the use of IIPS by the Office of Science is available at: <http://www.sc.doe.gov/production/grants/grants.html>.

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903-5212 in order to gain assistance for submission through IIPS, or to receive special approval and instructions on how to submit printed applications.

#### FOR FURTHER INFORMATION CONTACT:

Office of Fusion Energy Sciences, Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1290. Dr. Francis Thio is the Team Leader for the ICC Program. Specific contacts for each area of interest within the ICC program, along with telephone numbers and Internet addresses, are listed below:

1. *Spherical torus:* Dr. Don Priester, Research Division, SC-55, Telephone: (301) 903-3752, or by Internet address: [don.priester@science.doe.gov](mailto:don.priester@science.doe.gov).
2. *Stellarator, electric tokamak, levitated dipole configuration, innovative research in tokamaks:* Dr. Charles Finfgeld, Research Division, SC-55, Telephone: (301) 903-3423, or by Internet address: [Charles.Finfgeld@science.doe.gov](mailto:Charles.Finfgeld@science.doe.gov).
3. *Reversed Field Pinch, field reversed configuration, spheromak, magnetized target fusion, electrostatic confinement, plasma heating:* Dr. Francis Thio, Research Division, SC-55, Telephone: (301) 903-4678, or by Internet address: [francis.thio@science.doe.gov](mailto:francis.thio@science.doe.gov).
4. *Configuration with strong shear flow stabilization:* Dr. Curt Bolton, Research Division, SC-55, Telephone: (301) 903-4914, or by Internet address: [curt.bolton@science.doe.gov](mailto:curt.bolton@science.doe.gov).
5. *Active and passive plasma control:* Dr. Steve Eckstrand, Research Division, SC-55, Telephone: (301)

903-5546, or by Internet address:  
[steve.eckstrand@science.doe.gov](mailto:steve.eckstrand@science.doe.gov).

6. *All other innovative concepts and approaches:* Dr. Francis Thio, Research Division, SC-55, Telephone: (301) 903-4678, or by Internet address: [francis.thio@science.doe.gov](mailto:francis.thio@science.doe.gov).

**SUPPLEMENTARY INFORMATION:** General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: <http://www.sc.doe.gov/production/grants/grants.html>. DOE is under no obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results within three to five years after grant initiation. Theoretical research will be accepted for consideration under this Notice when bundled with and in support of an experimental application.

Applications concerned with scientific assessment of new concepts or approaches that are not ready for experimental investigation should have a well-defined scope. The product of such assessment would be a clear scientific description of the concept and its operation, its physics and engineering basis, critical analysis of major difficulties to be overcome in developing the concept as a net producer of energy through the fusion process, and an analysis of what would be achieved by moving to experimental research.

#### Program Funding

It is anticipated that about \$6,000,000 of Fiscal Year 2004 funding will be available to fund new work or renewals of existing work from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications for scientific assessment of new concepts will be limited to a maximum of \$150,000 in

any year. Applications requiring annual funding as low as \$50,000 are welcome and encouraged.

Collaborative research projects involving more than one institution are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at: <http://www.sc.doe.gov/production/grants/Colab.html>.

Applications from individual PIs or small groups (1-4 people) should be limited to a maximum of twenty (20) pages (including text and figures) of technical information, while applications from larger research groups should be limited to thirty (30) pages. The PDF file may also include a few selected publications in an Appendix as background information. In addition, in the electronic submission, please limit biographical and publication information for the principal investigator and key personnel to no more than two pages each. Each principal investigator should provide an e-mail address.

In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A statement about the goal of the proposed investigation, (2) a synopsis of the research plan, (3) the specific results or deliverable expected at the end of the project period, (4) a discussion of why this research would have an important impact on the prospects for fusion energy, or why this research would lead to an attractive pathway towards practical fusion energy, (5) a discussion of how the research would elucidate the physics principles of the innovation, (6) a detailed research plan, and (7) information on the adequacy of the facilities and budget.

#### Merit Review

Applications will be subjected to formal merit review and will be

evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605. (<http://www.sc.doe.gov/production/grants/605index.html>)

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The Office of Fusion Energy Sciences shall also consider, as part of the evaluation, other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas and within the program areas, coupling to the theory and computational efforts, and quality of previous performance. Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability. Funding under this Notice is limited to supporting research activities based in the U.S., though subcontracts with limited funding for collaborators outside the U.S. may be allowed with appropriate justifications.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on February 24, 2003.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 03-4994 Filed 3-3-03; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

[DE-PS07-03ID14447]

### Nuclear Energy Plant Optimization Program (NEPO)

**AGENCY:** Idaho Operations Office, Department of Energy.

**ACTION:** Notice of competitive financial assistance solicitation.

**SUMMARY:** The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking proposals from nuclear utility R&D organizations, nuclear reactor owner's groups, nuclear R&D organizations, reactor vendors, and other nuclear industry companies to conduct advanced research and development designed to improve the operation of present U.S. nuclear power

plants. The purpose of the NEPO program is to conduct Research and Development that meets at least one of the following objectives: (1) Contributes to the increase of electrical generation capability from existing nuclear power plants; (2) contributes to continued improvement in average industry capacity factors, and (3) contributes to the development of break-through technologies in long-term operation to ensure a minimum of 60 years of operation.

**DATES:** Solicitation Number DE-PS07-03ID14447 was issued on February 21, 2002. The deadline for receipt of completed applications is 4 p.m. e.s.t. April 24, 2003.

**ADDRESSES:** The formal solicitation document was disseminated electronically through the Industry Interactive Procurement System (IIPS) located at the following URL: <http://e-center.doe.gov>.

**FOR FURTHER INFORMATION CONTACT:** Elaine Richardson, Contracting Officer, at [richarem@id.doe.gov](mailto:richarem@id.doe.gov), facsimile at (208) 526-5548, or by telephone at (208) 526-2640.

**SUPPLEMENTARY INFORMATION:** DOE anticipates making no more than 15 cooperative agreement awards, each ranging from \$250,000 to \$500,000 in federal funding. The project performance period for each R&D project is anticipated to be no more than 12 to 18 months.

Fifty percent (50%) minimum industry cost share is required for all projects. The solicitation is available in its full text via the Internet at the following address: <http://e-center.doe.gov>. The statutory authority for this program is section 31 of the Atomic Energy Act, 42 U.S.C. 2051. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.121, Nuclear Energy Research, Development and Demonstration.

Issued in Idaho Falls on February 21, 2003.

**Michael L. Adams,**

*Acting Director, Procurement Services Division.*

[FR Doc. 03-4996 Filed 3-3-03; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-200-099]

#### CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

February 26, 2003.

Take notice that on February 24, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing its compliance filing in conformity with the order of the Federal Energy Regulatory Commission issued on January 24, 2003, 102 FERC • 61,059 (2003).

CEGT states that a copy of this filing has been served on each person designated on the official service list in Docket No. RP96-200-091.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* March 10, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-5106 Filed 3-3-03; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP03-260-000]

#### Central New York Oil And Gas Company, LLC; Notice of Tariff Filing

February 25, 2003.

Take notice that on February 20, 2003, Central New York Oil and Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective March 22, 2003:

First Revised Sheet No. 1  
Original Sheet No. 4A  
Second Revised Sheet No. 31  
Original Sheet Nos. 34-49  
Original Sheet No. 51  
Original Sheet No. 53 Original Sheet No. 54  
Original Sheet Nos. 55-69  
First Revised Sheet No. 85  
First Revised Sheet No. 99  
First Revised Sheet No. 101  
First Revised Sheet No. 121  
Second Revised Sheet No. 122  
First Revised Sheet No. 137  
First Revised Sheet No. 140  
Original Sheet No. 142  
Original Sheet No. 144  
Original Sheet No. 146  
First Revised Sheet No. 2  
Second Revised Sheet No. 5  
Second Revised Sheet No. 32  
Original Sheet No. 50  
Original Sheet No. 52  
First Revised Sheet No. 75  
Second Revised Sheet No. 98  
First Revised Sheet No. 100  
First Revised Sheet No. 108  
Original Sheet No. 121A  
Second Revised Sheet No. 132  
Second Revised Sheet No. 138  
Original Sheet No. 141  
Original Sheet No. 143  
Original Sheet No. 145  
Original Sheet No. 147

CNYOG states that the purpose of its filing is to add Rate Schedule PAL to its tariff, so that CNYOG may provide park and loan services to its customers, and to make certain enhancements to the interruptible storage service CNYOG offers under its Rate Schedule ISS.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* March 4, 2003.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-4967 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-411-002]

#### Chandeleur Pipe Line Company; Notice of Compliance Filing

February 26, 2003.

Take notice that on February 24, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2002:

Second Substitute Fourth Revised Sheet No. 3

Second Substitute Seventh Revised Sheet No. 19A

Second Substitute Second Revised Sheet No. 19A.02

Second Substitute Fourth Revised Sheet No. 19C

Second Revised Sheet No. 31A

Fifth Revised Sheet No. 32

Substitute 1st Rev Original Sheet No. 32A

Second Substitute Original Sheet No. 52B

Original Sheet No. 52C.

Chandeleur asserts that the purpose of this filing is to comply with the Commission's order issued February 10, 2003, in Docket No. RP02-411-001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* March 10, 2003.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5105 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-389-076]

#### Columbia Gulf Transmission Company; Notice of Compliance Filing

February 26, 2003.

Take notice that on February 24, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 316, with an effective date of December 15, 2002.

Columbia Gulf states that it is submitting FTS Service Agreement No. 71557, which is an agreement for firm transportation service to be provided by Columbia Gulf to Stone Energy and the November 2, 2001 Amendment to FTS-2 Service Agreement No. 71557 (together the Stone Agreement). Service under the Stone Agreement commenced on December 15, 2001 and will continue for a three-year term.

Columbia Gulf states that the Stone Agreement is inconsistent with its tariff and its pro forma Rate Schedule FTS service agreement and therefore constitutes a non-conforming service agreement within the meaning of

section 154.1(d) of the Commission Regulations.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Protest Date:* March 10, 2003.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5107 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP03-53-000]

#### Natural Gas Pipeline Company of America; Notice of Application

February 25, 2003.

Take notice that on February 20, 2003, Natural Gas Pipeline Company of America (Natural), tendered for filing in Docket No. CP03-53-000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder requesting permission and approval to abandon a firm gas transportation service, and related interruptible overrun gas transportation service, authorized in Docket No. CP82-50, as amended, performed under Natural's Rate

Schedule X-129 for Texas Gas Transmission Corporation (Texas Gas).

Natural states that pursuant to a gas transportation agreement between Natural and Texas Gas dated October 20, 1981, as amended, Natural receives on a firm basis up to 50,000 MMBtu of natural gas per day, with related interruptible overrun gas transportation service, for the account of Texas Gas in Beckham, Custer, Washita and Woodward Counties, Oklahoma and Wheeler County, Texas (Anadarko Area) and redelivers such gas to Texas Gas at Lowry in Cameron Parish, Louisiana.

Natural states that by a Termination Agreement between Natural and Texas Gas dated January 16, 2003, Natural and Texas Gas agreed to terminate the Agreement, as amended, effective May 27, 2003. Natural seeks authority to abandon its firm gas transportation service, and interruptible overrun gas transportation service, for Texas Gas performed under the Agreement, as amended, and Natural's Rate Schedule X-129 authorized in Docket No. CP82-50, as amended, effective May 27, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* March 4, 2003.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-4964 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-176-079]

#### Natural Gas Pipeline Company of America; Notice of Negotiated Rates

February 25, 2003.

Take notice that on February 21, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 26W.24 through 26.W.26 to be effective February 21, 2003.

Natural states that the purpose of this filing is to implement an amendment to two (2) existing negotiated rate transactions entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99-176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* March 5, 2003.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-4968 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP03-13-000]

#### Northwest Pipeline Corporation; Notice of Site Visit

February 25, 2003.

On March 12, 2003, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (Northwest's) proposed Clackamas River Project in Clackamas County, Washington. The site visit will begin at 9 am at Northwest's Oregon City Compressor Station south of the Clackamas River. Both sides of the Clackamas River crossing will be visited. Representatives of Northwest, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Oregon may accompany the staff. Any person interested in attending the site visit should meet with FERC staff at 9:00 am at the Oregon City Compressor Station and must provide their own transportation.

The address of the Oregon City Compressor Station is 15124 South Springwater Rd, Oregon City, OR 97045, phone number (503) 631-2163 x 2460. This station can be accessed by using the Carver exit off Highway 212/224. For further information about the project, please contact the Commission's Office of External Affairs at (202) 502-8004 or toll free at 1-866-208-3372.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-4962 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP03-32-000]

#### Northwest Pipeline Corporation; Notice of Interagency Meeting and Site Visit

February 25, 2003.

On March 11, 2003, the staff of the Office of Energy Projects (OEP) will conduct a meeting and site visit of Northwest Pipeline Corporation's (Northwest's) proposed White River

Replacement Project in King County, Washington. The meeting will begin at 9 am inside the Muckleshoot Indian Tribe's Department of Planning and Public Works. Representatives of Northwest, the Muckleshoot Indian Tribe, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Washington may accompany the staff. The meeting will be followed by a site visit to both sides of the White River crossing. Any person interested in attending the site visit should meet with FERC staff at 12:00 noon in the parking lot of the Muckleshoot Indian Tribe's Department of Planning and Public Works. Those planning to attend must provide their own transportation.

The location of the Muckleshoot Indian Tribe's Department of Planning and Public Works is 40320 Auburn-Enumclaw Road SE (State Route 164) in Auburn, Washington, 98092, phone number (360) 802-1922. For further information about the project, please contact the Commission's Office of External Affairs at (202) 502-8004 or toll free at 1-866-208-3372.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-4963 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC03-58-000, et al.]

#### **AEP Texas Central Company and AEP Texas North Company, et al.; Electric Rate and Corporate Regulation Filings**

February 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

##### **1. AEP Texas Central Company and AEP Texas North Company**

[Docket No. EC03-58-000]

Take notice that on February 21, 2003, American Electric Power Company, Inc. filed with the Federal Energy Regulatory Commission (Commission) on behalf of AEP Texas Central Company and AEP Texas North Company (AEP Companies), an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities to Pedernales Electric Cooperative, Inc. (PEC).

American Electric Power Company, Inc. States that SEP Companies' filing

was served on PEC and the Public Service Commission of Texas.

*Comment date:* March 14, 2003.

##### **2. CMS Marketing, Services & Trading Company**

[Docket No. EC03-59-000]

Take notice that on February 24, 2003, CMS Marketing, Services & Trading Company (CMST) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization to dispose of jurisdictional and power sales contracts to Constellation Power Source, Inc. (CPSI). CMST and CPSI are Commission-authorized power marketers.

*Comment date:* March 17, 2003.

##### **3. Wisvest Connecticut, LLC and ISO New England Inc.**

[Docket No. EL03-11-001]

Take notice that on February 24, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc., (ISO-NE) filed with the Federal Energy Regulatory Commission (Commission) their Report of Compliance in response to the requirements of the Commission's December 26, 2002 order in Wisvest-Connecticut, LLC, 101 FERC • 61,372 (2002).

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* March 26, 2003.

##### **4. Cabazon Power Partners, LLC**

[Docket No. ER03-521-000]

##### **Enron Wind Systems, LLC**

[Docket No. ER03-522-000]

##### **Zond Windsystems Partners Ltd., Series 85-A**

[Docket No. ER03-523-000]

##### **Zond Windsystems Partners Ltd., Series 85B**

[Docket No. ER03-524-000]

##### **Sky River Partnership**

[Docket No. ER03-525-000]

##### **Victory Garden Phase IV Partnership**

[Docket No. ER03-526-000]

##### **ZWHC, LLC**

[Docket No. ER03-527-000]

##### **Painted Hills Wind Developers**

[Docket No. ER03-528-000]

Take notice that on January 31, 2003, Cabazon Power Partners, LLC, Enron

Wind Systems, LLC, Zond Windsystems Partners Ltd., Series 85-A; Zond Windsystems partners Ltd., Series 85B; Sky River Partnership, Victory Garden Phase IV Partnership, ZWHC LLC and Painted Hill Wind Developers filed amended Power Purchase Agreements under section 205 of the Federal Power Act.

*Comment Date:* March 19, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5093 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC03-57-000, et al.]

#### **Calhoun Power Company I, LLC, et al.; Electric Rate and Corporate Filings**

February 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.



**1. Calhoun Power Company I, LLC and Alabama Power Company**

[Docket No. EC03-57-000]

Take notice that on February 19, 2003, Calhoun Power Company I, LLC (Calhoun) and Alabama Power Company (Alabama Power) jointly filed with the Federal Energy Regulatory Commission an application for authorization under Section 203 of the Federal Power Act for a transfer from Calhoun to Alabama Power of limited facilities located within the Bynum Substation, which interconnects the Calhoun generating facility to the Alabama Power transmission system.

*Comment Date:* March 12, 2003.

**2. Oildale Energy LLC**

[Docket Nos. EL03-48-000 and QF84-518-005]

Take notice that on February 7, 2003, Oildale Energy LLC, a limited liability company with its principal place of business at 2420 Camino Ramon, Suite 101, San Ramon, California 94583, filed with the Federal Energy Regulatory Commission (Commission) a petition for a limited waiver of the Commission's efficiency standard pursuant to § 292.205" of the Commission's regulations.

*Comment Date:* March 7, 2003.

**3. Quest Energy, L.L.C.**

[Docket No. ER00-1832-001]

Take notice that on February 14, 2003, WPS Resources Corporation (WPSR), on behalf of Quest Energy, L.L.C. (Quest), submitted a notice of change in status under Quest's market-based rate authority to reflect WPSR's indirect acquisition of Quest.

*Comment Date:* March 7, 2003.

**4. Ameren Services Company; American Transmission Systems, Incorporated; Northern Indiana Public Service Company; National Grid USA; GridAmerica LLC; GridAmerica Holdings, Inc.; and Midwest Independent Transmission System Operator, Inc.**

[Docket Nos. ER02-2233-003 and EC03-14-003]

Take notice that on February 18, 2003, the GridAmerica Participants (National Grid USA; GridAmerica LLC; GridAmerica Holdings, Inc., the managing member of GridAmerica; and the GridAmerica Companies which include Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS; American Transmission Systems, Incorporated, a subsidiary of

FirstEnergy Corp.; and Northern Indiana Public Service Company) and the Midwest Independent Transmission System Operator, Inc. submitted a Compliance Filing as required by Ordering Paragraph (B) of the Commission's December 19, 2002 Order, 101 FERC ¶ 61,320 (2002), in this proceeding.

The parties state that they are serving copies of the filing on the parties to the above-referenced proceeding, as well as affected state commissions, in accordance with the requirements of § 385.2010 of the Commission's Regulations, 18 CFR 385.2010 (2002), and are serving the filing by e-mail on the parties on the Midwest ISO's extensive email service list.

*Comment Date:* March 12, 2003.

**5. El Paso Electric Company**

[Docket No. ER03-23-002]

Take notice that on February 14, 2003, El Paso Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report as directed by the Commission in El Paso Elec. Co., 101 FERC ¶ 61,276 at P 5 (2002).

*Comment Date:* March 7, 2003.

**6. ConocoPhillips Company**

[Docket No. ER03-428-002]

Take notice that on February 14, 2003, ConocoPhillips Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an Amended Code of Conduct to be attached to its Amended Notice of Succession notifying the Commission that, effective December 31, 2002, Conoco Inc. changed its name to ConocoPhillips Company.

*Comment Date:* March 7, 2003.

**7. American Transmission Company LLC**

[Docket No. ER03-537-000]

Take notice that on February 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin River Power Company. ATCLLC requests an effective date of January 15, 2003.

*Comment Date:* March 7, 2003.

**8. ONEOK Energy Marketing and Trading Company, L.P.**

[Docket No. ER03-538-000]

Take notice that on February 14, 2003, ONEOK Energy Marketing and Trading Company, L.P. filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, a Revised Rate

Schedule to allow for sales, assignments, or transfers of energy or capacity. This Revised Rate Schedule replaces that which is currently on file with the Commission.

*Comment Date:* March 7, 2003.

**9. Carolina Power & Light Company and Florida Power Corporation**

[Docket No. ER03-540-000]

Take notice that on February 14, 2003, Carolina Power & Light Company, doing business as Progress Energy Carolinas and Florida Power Corporation, doing business as Progress Energy Florida (Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) modifications to their Open Access Transmission Tariffs (OATT). The modifications consist of changes to the creditworthiness provisions so that the OATTs reflect the current climate of credit risk in the industry.

Progress Energy Carolinas and Progress Energy Florida respectfully request that the OATT modifications become effective on March 1, 2003 in order to minimize the potential exposure of the companies and their native load customers to unreimbursed expenses.

Applicants state that copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

*Comment Date:* March 7, 2003.

**10. Wayne-White Counties Electric Cooperative**

[Docket No. ER03-541-000]

Take notice that on February 14, 2003, Wayne-White Counties Electric Cooperative (Wayne-White or Cooperative) tendered for filing two executed Service Agreements for Firm Point-to-Point Transmission Service with Illinois Power Company. Under the Service Agreements, Wayne-White states that they will provide firm point-to-point transmission service to Illinois Power Company under the Cooperative's Open Access Transmission Tariff. Wayne-White requests an effective date of February 1, 2003, the date service was first provided, for the Fourth Revised Service Agreement between Wayne-White and Illinois Power Company. Wayne-White requests an effective date of April 1, 2003, for the Fifth Revised Service Agreement between Wayne-White and Illinois Power Company.

Wayne-White states that a copy of the filing was served upon Illinois Power Company.



*Comment Date:* March 7, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5092 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-1115-001, et al.]

#### Calpine Construction Finance Company, L.P., et al.; Electric Rate and Corporate Filings

February 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

#### 1. Calpine Construction Finance Company, L.P.

[Docket No. ER00-1115-001]

Take notice that on February 24, 2003, Calpine Construction Finance Company,

L.P., submitted for filing its triennial market power analysis in compliance with the Commission Order issued in this docket on February 23, 2000.

*Comment Date:* March 17, 2003.

#### 2. PJM Interconnection, L.L.C.

[Docket No. ER02-1726-000]

Take notice that on January 29, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing a Notice of Withdrawal of the Facilities Operation Agreement among PJM, Rock Springs Generation, L.L.C., and CED Rock Springs, Inc., filed in the above proceeding on May 6, 2002.

*Comment Date:* March 7, 2003.

#### 3. PJM Interconnection, L.L.C.

[Docket No. ER02-2562-000]

Take notice that on January 29, 2003, PJM Interconnection, L.L.C., (PJM) tendered for filing a request that the Commission end its deferral of action in a proceeding filed on September 17, 2002 of an Executed Interconnection Service Agreement between PJM and the owners of the Rock Springs Generating Facility.

*Comment Date:* March 7, 2003.

#### 4. Carolina Power & Light Company and Florida Power Corporation

[Docket No. ER03-540-001]

Take notice that on February 24, 2003, Carolina Power & Light Company, doing business as Progress Energy Carolinas and Florida Power Corporation, doing business as Progress Energy Florida tendered for filing with the Federal Energy Regulatory Commission modifications of their February 14, 2003 filing in this docket. The filing further modifies the creditworthiness provisions so that the OATTs reflect the current climate of credit risk in the industry and corrects clerical errors in the February 14 filing.

Progress Energy Carolinas and Progress Energy Florida respectfully request that the OATT modifications become effective on March 1, 2003 in order to minimize the potential exposure of the companies and their native load customers to unreimbursed expenses.

Progress Energy Carolinas and Progress Energy Florida state that copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

*Comment Date:* March 17, 2003.

#### 5. Southern California Edison Company

[Docket No. ER03-553-000]

Take notice that on February 24, 2003, Southern California Edison Company

(SCE) tendered for filing revised rate sheets (Revised Sheets) for the Power Contract (Power Contract) and the Capacity Exchange Agreement (Capacity Exchange Agreement) between SCE and the Department of Water Resources of the State of California (CDWR). The purpose of this filing is to modify the terms and conditions pursuant to which SCE may curtail the hourly schedules of Return Energy, Additional Energy and Exchange Energy to CDWR to be consistent with the new electric market structure in California, to reflect that SCE has divested its oil and gas-fired generation, and to be consistent with the scheduling protocols of the California Independent System Operator Corporation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and CDWR.

*Comment Date:* March 17, 2003.

#### 6. Virginia Electric and Power Company

[Docket No. ER03-554-000]

Take notice that on February 24, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's generating facility and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on February 25, 2003, the day after filing.

Dominion Virginia Power states that copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

*Comment Date:* March 17, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on

or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 03-5094 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER01-1305-006, et al.]

#### Westar Generating, Inc., et al.; Electric Rate and Corporate Filings

February 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

##### 1. Westar Generating, Inc.

[Docket No. ER01-1305-006]

Take notice that on February 20, 2003, Westar Generating, Inc., (WG) submitted for filing a Notice of Withdrawal of First Revised Rate Schedule FERC No. 1 dated February 1, 2003, in Docket No. ER01-1305-006, filed January 31, 2003. WG is withdrawing the referenced filing based on discussions with the Kansas Corporation Commission, and will submit a new filing shortly reflecting these discussions.

*Comment Date:* March 13, 2003.

##### 2. Illinois Power Company

[Docket No. ER03-249-001]

Take notice that on February 21, 2003, Illinois Power Company (Illinois Power), submitted a response to the Commission's Letter Order dated January 20, 2003 regarding Illinois Power's December 6, 2002 filing of an

executed interconnection agreement with Franklin County Power of Illinois.  
*Comment Date:* March 14, 2003.

##### 3. Northern Indiana Public Service Company

[Docket No. ER03-250-001]

Take notice that on February 20, 2003, Northern Indiana Public Service Company, in compliance with the Commission's Order issued on January 21, 2003, is submitted the service agreement designations as required by Order No. 614 for the service agreements on December 6, 2002.

*Comment Date:* March 13, 2003.

##### 4. Soyland Power Cooperative, Inc.

[Docket No. ER03-289-001]

Take notice that on February 21, 2003, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised rate schedules in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order dated January 21, 2003.

*Comment Date:* March 14, 2003.

##### 5. San Diego Gas & Electric Company

[Docket No. ER03-548-000]

Take notice that on February 20, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreement No. 9 and First Revised Service Agreement No. 11 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6, incorporating revisions to the Expedited Interconnection Facilities Agreement with CalPeak Power Enterprise, LLC and CalPeak Power Border, LLC, (collectively, CalPeak) respectively. The revised Service Agreements implement Internal Revenue Service Notice 2001-82, "Expansion of Safe Harbor Provisions Under Notice 88-129", which provides that in certain circumstances, regulated public utilities such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. The amendment further clarifies terms pertaining to creditworthiness requirements of CalPeak and the guarantor of CalPeak's financial obligations as contemplated by Section 10.22.

SDG&E requests an effective date of September 24, 2001 for the Revised Service Agreements, and a waiver of the sixty-day notice requirement of 18 CFR 35.11.

SDG&E states that copies of the filing have been served on CalPeak and on the California Public Utilities Commission.

*Comment Date:* March 13, 2003.

##### 6. Southern California Edison Company

[Docket No. ER03-549-000]

Take notice that on February 20, 2003, Southern California Edison Company (SCE), tendered for filing revised Service Agreements (Service Agreements) for Wholesale Distribution Service between SCE and City of Azusa, City of Banning, City of Colton, City of Riverside and Southern California Water Company. The Service Agreement serves to provide the terms and conditions under which SCE provides Distribution Service under SCE's FERC Electric Tariff, First Revised Volume No. 5. SCE is proposing revised rates and rate terms. The proposed changes would increase revenues from jurisdictional service by \$1,233,175 based on the 12-month period following the effective date. Additionally, SCE is revising the rate terms to be consistent with its proposed rates and proposing to revised the Real Power Loss Factors in the Service Agreements.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and the affected customers.

*Comment Date:* March 13, 2003.

##### 7. New England Power Pool and ISO New England Inc.

[Docket No. ER03-550-000]

Take notice that on February 21, 2003, ISO New England Inc. and the New England Power Pool (NEPOOL) jointly submitted revisions to NEPOOL Market Rule 1 and Appendix A thereto, under Section 205 of the Federal Power. NEPOOL and ISO New England Inc. have requested an effective date for the proposed changes of April 1, 2003.

NEPOOL states that copies of said filing have been served upon NEPOOL Participants and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the governors and utility regulatory agencies of the six New England States.

*Comment Date:* March 14, 2003.

##### 8. Baltimore Gas & Electric Company

[Docket No. ER03-551-000]

Take notice that on February 21, 2003, Baltimore Gas and Electric Company (BGE) submitted for filing a restated and revised Interconnection Agreement between BGE and Constellation Power Source Generation, Inc., (CPSG), formerly Constellation Generation, Inc., (CGI), that supercedes the Interconnection Agreement between BGE and CGI filed with the Commission on February 11, 2000 in Docket No.

ER00-1598-000 and accepted by the Commission by letter order dated March 29, 2000. The Interconnection Agreement has been revised to reflect a redefined Point of Interconnection for Wagner Unit 4, Constellation Power Source Generation, Inc.'s new legal name, and certain minor corrections in terminology.

BGE seeks an effective date of May 1, 2003 for the revised Interconnection Agreement.

*Comment Date:* March 14, 2003.

### 9. New York Independent System Operator, Inc.

[Docket No. ER03-552-000]

Take notice that on February 21, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). The proposed filing would amend the NYISO's creditworthiness requirements for participation in the NYISO-administered markets. The NYISO has requested that the Commission make the filing effective on April 30, 2003.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

*Comment Date:* March 14, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-

free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-4965 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Paper Scoping and Soliciting Scoping Comments

February 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* New Minor License.
- b. *Project No.:* 1413-032.
- c. *Date filed:* October 30, 2002.
- d. *Applicant:* Fall River Rural Electric Cooperative, Inc.
- e. *Name of Project:* Buffalo River Hydroelectric Project.
- f. *Location:* On the Buffalo River near its confluence with the Henry's Fork River, in Fremont, Idaho. The project occupies 9.8 acres of land within the Targhee National Forest.
- g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825.
- h. *Applicant Contact:* Fall River Rural Electric Cooperative, Inc., 1150 North 3400 East, Ashton, Idaho 83420, Tel. # (208) 652-7431, and/or Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, Tel. # (208) 745-0834.

i. *FERC Contact:* Gaylord Hoisington, (202) 502-6032, [gaylord.hoisington@FERC.gov](mailto:gaylord.hoisington@FERC.gov).

j. *Deadline for filing scoping comments is* March 27, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities

of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site, <http://www.ferc.gov>, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing Buffalo River Project consists of: (1) a 142-foot-long by 12-foot-high timber-faced rock-filled diversion dam; (2) a 40-foot-long by 3-foot-high concrete slab spillway with stop logs; (3) a fish passage structure; (4) a concrete intake structure with a 5-foot steel slide gate; (5) a trash rack; (6) a 52-foot-long by 5-foot-diameter concrete encased steel penstock; (7) a 34-foot-long by 22-foot-high masonry block powerhouse containing a 250-kilowatt Bouvier Kaplan inclined shaft turbine; and (8) other appurtenant facilities. The applicant estimates that the total average annual generation would be 1,679 megawatthours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the environmental analysis and to seek additional information pertinent to this analysis. The Commission intends to prepare an environmental assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

At this time, the Commission staff do not propose to conduct any formal public or agency meetings or an on-site visit. Instead, we will solicit comments, recommendations, information, and alternatives by conducting paper scoping through issuing Scoping Document 1 (SD1).

Copies of SD1 outlining the subject areas to be addressed in the EA were

distributed to the parties on the Commission's mailing list. Copies of SD1 are available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659.

As part of scoping the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

o. The tentative schedule for preparing the Buffalo River EA is:

*Major Milestone and Target Date*

Ready for Environmental Analysis Notice

October 30, 2003.

Draft EA Issued

January 30, 2004.

Final EA Issued

April 3, 2004.

**Note:** The schedule is going to vary depending upon the circumstances of the project (deficiencies, additional information, etc.) See Guidance for Publishing Hydro Licensing Schedules.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-4966 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Reissuance of Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

February 26, 2003.

The Commission is re-issuing this notice which was originally issued on January 22, 2003, because several state and federal agencies have requested additional time to provide comments or motions to intervene on the application.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Design and Project Boundary Due to Proposed Relocation of Powerhouse.

b. *Project No:* 11175-016.

c. *Date Filed:* April 4, 2002.

d. *Applicant:* Crown Hydro, LLC.

e. *Name of Project:* Crown Mill.

f. *Location:* The project is located on the Mississippi River, in Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r), 799 and 801.

h. *Applicant Contact:* Tom Griffin, Crown Hydro LLC, 5436 Columbus Avenue South, Minneapolis, MN 55427, (612) 825-1043.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502-6191, or e-mail address: [anumzziatta.purchiaroni@ferc.gov](mailto:anumzziatta.purchiaroni@ferc.gov).

j. *Deadline for filing comments and or motions:* March 18, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-11175-016) on any comments or motions filed.

k. *Description of Request:* Crown Hydro LLC (Crown) is proposing a change in project boundary to relocate the project's powerhouse, and to make additional modifications to the project. The project as originally licensed in 1999 included a powerhouse containing two vertical Kaplan generating units with a total capacity of 3,400 kW to be located in the basement of the historic Crown Roller Building on the west side of West River Parkway. Crown is now proposing to construct a powerhouse containing two vertical Kaplan generating units with a total capacity of

3,150 kW, on the east side of the West River Parkway, within the footprint of the remains of the Holly and Cataract Mill Foundation. The relocated powerhouse would be designed as an at-grade structure with two stairwells that would have above ground fencing, located within the Minneapolis Park and Recreation Board's property, at the Mill Ruins Park. Resources affected by this proposed amendment include cultural and aquatics.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1-866-208-3676 with or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03-5095 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12158-000]

#### Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12158-000.

c. *Date filed:* April 25, 2002.

d. *Applicant:* Rye Patch Hydro, LLC.

e. *Name of Project:* Rye Patch Dam Project.

f. *Location:* On the Humboldt River, in Pershing County, Nevada. The Project would utilize the U.S. Bureau of Reclamation's existing Rye Patch Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Brent Smith, Rye Patch Hydro, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745-0834.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's existing Rye Patch Dam and consist of: (1) A proposed 150-foot-long, 48-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 2.5 MW, (3) a proposed 3-mile-long, 15 kV transmission line, and (4) appurtenant facilities.

The applicant estimates that the average annual generation would be 10.95 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12158-000) on any comments or motions filed.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03-5096 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12276-000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* Red Bluff Hydro, LLC.

e. *Name of Project:* Red Bluff Diversion Dam Project.

f. *Location:* On the Sacramento River, in Tehama County, California. The project would utilize the U.S. Bureau of Reclamation's existing Red Bluff Diversion Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Brent Smith, Red Bluff Hydro, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745-0834.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's existing Rye Patch Dam and consist of: (1) a proposed 250-foot-long, 168-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 6 MW, (3) a proposed 1-mile-long, 25 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 45 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-5097 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12420-000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D#11 Project.

f. *Location:* On the Mississippi River, in Dubuque County, Iowa, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #11.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam # 11 and consist of: (1) 12 proposed 80-foot-long, 114-inch-diameter steel penstocks, (2) a proposed powerhouse containing six generating units having an installed capacity of 18.4 MW, (3) a proposed 300-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 113 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the



instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. **Agency Comments**—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5098 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Intent To Prepare Environmental Assessment, Availability of Scoping Document, and Soliciting Scoping Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with Commission and are available for public inspection:

a. *Type of Application*: New minor license.

b. *Project No.*: 12423-000.

c. *Date filed*: November 25, 2002.

d. *Applicant*: American Falls River District No. 2 and Big Wood Canal Company.

e. *Name of Project*: Lateral 993 Hydroelectric Project.

f. *Location*: Juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Reclamation (Bureau) project. The project would occupy about 10-15 acres of Federal land managed by the Bureau.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825").

h. *Applicant Contact*: Lynn Harmon, General Manager, American Falls Reservoir District No. 2 and Big Wood Canal Company, Box C, Shoshone, Idaho, 83352; (208) 886-2331.

i. *FERC Contact*: Allison Arnold at (202) 502-6346 or [allison.arnold@ferc.gov](mailto:allison.arnold@ferc.gov).

j. *Deadline for filing scoping comments*: 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official Service List for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "FERRIS" link.

k. This application is not ready for environmental analysis at this time.

l. The Lateral 993 Hydroelectric Power Project would consist of:

(1) A new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cubic feet per second (cfs); (3) a 10-foot-high gated concrete diversion structure that would divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or HDPE) penstock (72-inch-diameter); (5) a 30 by 50-foot concrete with masonry or metal walled powerhouse containing two 750-kilowatt (kW) turbines with a total installed capacity of 1,500 kW; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that would discharge into the North Gooding Main Canal; (7) a 2.4-mile-long transmission line, and (8) appurtenant facilities. The annual generation would be approximately 5.8 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process*: Pursuant to the National Environmental Policy Act and procedures of the Federal Energy Regulatory Commission (Commission or FERC), the Commission staff intends to prepare an Environmental Assessment (EA) that evaluates the environmental impacts of issuing a new license for the Lateral 993 Hydroelectric Project, located at the juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho.

The EA will consider both site-specific and cumulative environmental effects, if any, of the proposed action and reasonable alternatives, and will include an economic, financial, and engineering analysis. Preparation of staff's EA will be supported by a scoping process to ensure identification and analysis of all pertinent issues.

We prepared the enclosed Scoping Document 1 (SD1) to provide you with information on:

- The Lateral 993 Hydroelectric Project;
- The environmental analysis process we will follow to prepare the EA; and
- Our preliminary identification of issues that we will address in the EA.

We invite the participation of governmental agencies, non-governmental organizations, and the general public in the scoping process, and have prepared this SD1 to provide information on the proposed project and to solicit written comments and suggestions on our preliminary list of issues and alternatives to be addressed in the EA. The SD1 has been distributed to parties on the Service List for this proceeding and is available from our Public Reference Room at (202) 502-8371. It can also be accessed online at <http://www.ferc.gov> under the "FERRIS" link.

Given the fact that no comments have been filed to date related to the licensing, we do not anticipate at this time that there is adequate justification: (1) To arrange for Commission staff and interested members of the public to visit the project site; or (2) to hold a public meeting near the project site.

Please review this document and, if you wish to provide written input, follow the instructions contained in section 5.0. Please direct any questions about the scoping process to Allison Arnold at (202) 502-6346.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5099 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P



**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments**

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary permit.

b. *Project No.*: 12426-000.

c. *Date filed*: December 17, 2002.

d. *Applicant*: Universal Electric Power Corporation.

e. *Name of Project*: Red River Lock and Dam #1 Project.

f. *Location*: On the Red River, in Catahoula County, Louisiana. The project would utilize the U.S. Army Corps of Engineer's existing Red River L&D #1.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact*: Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115.

i. *FERC Contact*: Robert Bell, (202) 502-6062.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application*: Project No. 12381-000; date filed: October 1, 2002; date notice closes: March 24, 2003.

l. *Description of Project*: The proposed project using the U.S. Army Corps of Engineer's Red River Lock and Dam #1 and impoundment would consist of: (1) eight proposed 80-foot-long, 114-inch diameter steel penstocks, (2) a proposed powerhouse containing eight generating units having a total installed capacity of 16.2 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 99 GWh that would be sold to a local utility.

m. This filing is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Competing Applications*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

"PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-5100 Filed 3-3-03; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments**

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary permit.

b. *Project No.*: 12431-000.

c. *Date filed*: January 13, 2003.

d. *Applicant*: The University of Iowa.

e. *Name of Project*: Burlington Street Dam Project.

f. *Location*: On Iowa River, in Johnson County, Iowa. The Burlington Street Dam is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Doug True, The University of Iowa, 105 Jessup Hall, Iowa City, IA 52242-1316, (319) 335-3552.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) the existing 274.5-foot long, 19-foot-high concrete dam, (2) an existing reservoir having a surface area of 125 acres with a storage capacity of 700 acre-feet and a normal water surface elevation of 639.5 feet msl, (3) a proposed powerhouse containing two generating units having an installed capacity of 600 kW, (4) an existing transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 3.5 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

"PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,  
Secretary.

[FR Doc. 03-5101 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1960-002.

c. *Date filed:* February 19, 1999.

d. *Applicant:* Dairyland Power Cooperative—Wisconsin.

e. *Name of Project:* Flambeau Hydroelectric Station.

f. *Location*: On the Flambeau River in Rusk County, Wisconsin. The project does not utilize Federal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact*: Mr. Dave Carroll, Coordinator, Dairyland Power Cooperative, 3200 East Avenue, South La Cross, WI 54601, (608) 788-4000.

i. *FERC Contact*: Timothy Konner, Timothy.Konner@ferc.gov, or (202) 502-6359.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should file the request by the deadline specified in item k below.

k. *Deadline for filing motions to intervene and protests and requests for cooperating agency status*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The project consists of the following existing facilities: (1) A right earthen dam, 2,570 feet-long and a left earthen dam 2,130 feet-long, separated by a 138 foot-long gated spillway section with a crest elevation of 1157.0 feet NGVD; (2) a 1,900-acre reservoir with a normal water surface elevation of 1183.48 feet NGVD; (3) a powerhouse containing 3 vertical Kaplan turbines each connected to generator units for a total installed capacity of 15,000 kW; and (4) appurtenant facilities. The

average annual energy generation is 60,727,590 kWh. The dam and existing project facilities are owned by the applicant.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Alternative procedure schedule and final amendments*: The Commission staff proposes to issue one Environmental Assessment (EA) rather than issue a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposal alternative procedure, they should file comments by the deadline specified in item k above. The application will be processed according to the following schedule, and revisions to the schedule will be made as appropriate. *Issue Scoping Document 1 for comments*: March 2003. *Issue*

*Scoping Document 2, if necessary*: June 2003. *Notice of application is ready for environmental analysis*: July 2003.

*Notice of the availability of the EA*: December 2003. *Ready for Commission's decision on the application*: January 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-5103 Filed 3-3-03; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2197-060]

#### Notice of Drought Contingency Plan and Soliciting Comments, Motions To Intervene, and Protests

February 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Alcoa Power Generating, Inc filed a Drought Contingency Plan describing the actions to be taken at the Yadkin River hydroelectric project in the event of a drought during the summer of 2003.

b. *Project No*: 2197-060.

c. *Date Filed*: February 14, 2003.

d. *Applicant*: Alcoa Power Generating, Inc.(licensee).

e. *Name of Project*: Yadkin River.

f. *Location*: The project is located on the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact*: Julian Polk, Alcoa Power Generating Inc., 293 NC 740 Highway, PO Box 576, Badin, NC 28009-0576, (704) 422-5617.

i. *FERC Contact*: Any questions on this notice should be directed to Mr. T.J. LoVullo at (202) 502-8900, or e-mail address: [thomas.lovullo@ferc.gov](mailto:thomas.lovullo@ferc.gov).

j. *Deadline for filing comments and or motions*: March 28, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-2197) on any comments or motions filed.

k. *Description of Drought Plan:* By letter dated December 20, 2002, the Commission stated that if precipitation during the winter of 2002/2003 is below average and ground water tables have not completely recharged, severe drought conditions could return to the region during the summer of 2003. To minimize any adverse impacts associated with a drought, the Commission required the licensee to file a drought contingency plan for the summer of 2003.

The licensee's Drought Contingency Plan discusses competing demands for water in the Yadkin-Pee Dee River Basin and describes a process for monitoring and responding to drought conditions. The licensee's plan includes: (1) Declaring the existence of a drought when the U.S. Drought Monitor elevates 10% or more of the Yadkin-Pee Dee River basin to a drought severity classification of D1 or higher; (2) developing action and communication plans should drought conditions emerge; (3) holding meetings with officials from North and South Carolina, Progress Energy and the U.S. Fish & Wildlife Service to monitor conditions; (4) implementing operational changes to balance competing interests; and (5) continuing to study salt-water intrusion at fresh water intakes on the coast of South Carolina.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter Project No. 2197 excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion

to intervene in accordance with the Commission's Rules may become a party to the proceeding.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

o. *Filing and Service of Responsive Documents:* All filings must bear in capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time deadline specified, it will be presumed to have no comments other than any included with the licensee's filing. One copy of an agency's comments should be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Magalie R. Salas,  
Secretary.

[FR Doc. 03-5104 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 184-065]

#### El Dorado Irrigation District, California; Notice of Public Meetings

February 26, 2003.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties,

California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

March 10 Plenary Meeting—9 a.m.—4 p.m.;

March 11 Plenary Meeting—9 a.m.—4 p.m.;

March 18 Plenary Meeting—9 a.m.—4 p.m.; and

March 19 Plenary Meeting—9 a.m.—4 p.m.

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502-8771 or John Mudre at (202) 502-8902.

Magalie R. Salas,  
Secretary.

[FR Doc. 03-5102 Filed 3-3-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Post-2005 Resource Pool, Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures and call for applications.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Customer Service Region, a Federal power marketing agency of the Department of Energy (DOE), is publishing this notice to seek comments on proposed procedures and call for applications from preference entities interested in an allocation of Federal power. The Energy Planning and Management Program (Program) provides for establishing project-specific resource pools and allocating power from these pools to new preference customers and other purposes as determined by Western. Western, in accordance with the Program, proposes allocation procedures for comment and consideration for entities interested in a Federal power resource pool increment

of up to 1 percent (approximately 20 megawatts) of the long-term marketable resource of the Pick-Sloan Missouri Basin Program, Eastern Division (P-SMBP-ED) that may become available January 1, 2006. Preference entities that wish to apply for an allocation of power from Western's Upper Great Plains Customer Service Region must submit formal applications as outlined below.

**DATES:** Entities interested in commenting on proposed procedures and/or applying for an allocation of Western power must submit written comments and/or applications to Western's Upper Great Plains Customer Service Regional Office at the address below. Western must receive written and/or electronic comments and/or applications by 4 p.m., MDT, on June 2, 2003. Entities are encouraged to use certified mail, e-mail, or fax for delivery of comments and/or applications. Western will accept comments and/or applications received via regular mail through the United States Postal Service if postmarked at least 3 days before June 2, 2003, and received no later than June 9, 2003. Western reserves the right to not consider any comments and/or applications that are not received by the prescribed dates and times. Western will hold public information forums (not to exceed 2 hours) and public comment forums (immediately following the information forums) on the proposed procedures and applications.

The public information and comment forum dates are:

1. April 8, 2003, 1 p.m. to 5 p.m., Billings, Montana.
2. April 9, 2003, 1 p.m. to 5 p.m., Moorhead, Minnesota.
3. April 10, 2003, 9 a.m. to 1 p.m., Sioux City, Iowa.

**ADDRESSES:** Send applications for an allocation of Western power and written comments regarding these proposed procedures to Robert J. Harris, Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101-1266. Applications for an allocation of Western power and comments on the proposed procedures may also be faxed to (406) 247-7408 or e-mailed to [Post2005UGP@wapa.gov](mailto:Post2005UGP@wapa.gov). Applications are available upon request or may be accessed at <http://www.wapa.gov/ugp/contracts/post2005/APD.htm>. Applicants are encouraged to use the application form provided at the above Web site.

The public information and comment forum locations are:

1. Billings—Holiday Inn Billings Plaza Hotel and Convention Center, 5500 Midland Road, Billings, MT 59101

2. Moorhead—Courtyard by Marriott, Moorhead Area Conference Center, 1080 28th Avenue South, Moorhead, MN 56560

3. Sioux City—Hilton Sioux City, 707 Fourth Street, Sioux City, IA 51101-1701

**FOR FURTHER INFORMATION CONTACT:** Jon R. Horst, Public Utilities Specialist, Upper Great Plains Customer Service Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101-1266, telephone (406) 247-7444, e-mail [horst@wapa.gov](mailto:horst@wapa.gov).

All documents developed or retained by Western in developing this Post-2005 Resource Pool will be available for inspection and copying at the Upper Great Plains Customer Service Region in Billings, Montana. Public comments will be available for viewing at <http://www.wapa.gov/ugp/contracts/post2005/comments.htm> after the close of the comment period.

**SUPPLEMENTARY INFORMATION:** On October 20, 1995, Western published the Final Program Rule. The Final Rule became effective on November 20, 1995. Subpart C—Power Marketing Initiative of the Program, Final Rule, 10 CFR part 905, provides for project-specific resource pools and allocations of power from these pools to eligible new customers and/or for other appropriate purposes as determined by Western. The additional resource pool increments shall be established by pro rata withdrawals, on 2 years' notice, from then-existing customers. Specifically, 10 CFR section 905.32 (b) provides:

At two 5-year intervals after the effective date of the extension to existing customers, Western shall create a project-specific resource pool increment of up to 1 percent of the long-term marketable resource under contract at the time. The size of the additional resource pool increment shall be determined by Western based on consideration of the actual fair-share needs of eligible new customers and other appropriate purposes.

On April 22, 2002, Western published a Notice for Letters of Interest in the **Federal Register** (67 FR 19571) in which Western solicited and received Letters of Interest regarding a resource pool of up to 1 percent (approximately 20 megawatts) of the marketable resource that may become available January 1, 2006, for new customers and/or other appropriate purposes pursuant to the Program. Traditionally, Western has marketed allocations of firm power to be apportioned to eligible new preference entities in such a manner as to encourage the most widespread use thereof, in accordance with Federal Reclamation Law.

## Letters of Interest

Western received 65 Letters of Interest regarding the up to 1 percent resource pool. The letters were evaluated and categorized into three main areas of interest. Sixteen letters were from entities interested in becoming a new customer. Eleven letters were from entities that expressed an interest in other appropriate purposes such as: increasing current customer allocations, adjusting past allocations, and supporting renewable resources. Thirty-eight of the letters were from entities that recommended Western forego implementation of the proposed resource pool. The 38 letters also recommended if Western proceeds with the proposed resource pool, the pool should not be made available for other appropriate purposes.

## Response to Letters of Interest

Western has historically marketed power from resource pools to new preference customers through marketing plans and initiatives. Western recognizes the interest expressed from 16 potential new customers in an allocation from the P-SMBP-ED. Western encourages the new customer interest that lends support to Western's mission of allocating low-cost hydropower in such a way as to promote the most widespread use thereof.

Western received various Letters of Interest regarding the need for other appropriate purposes. Several letters were received from entities desiring adjustments or increases to their current allocations. Specifically, two letters were received in support of adjusting two separate Tribal allocations from the P-SMBP-ED Post-2000 Resource Pool (62 FR 11174) (Post-2000 Resource Pool). Also, several letters were received from municipal utilities in support of increasing their current allocations. Historically, Western has not changed or increased allocations within the P-SMBP-ED that were established in past marketing initiatives. Western recognizes that customer loads continue to grow and change and increases in individual allocations would be beneficial. However, if Western were to entertain requests for increases or adjustments to allocations, all customers would need to be afforded the opportunity to submit new applications. If this were to occur, it is likely Western would receive significant modification requests, which would be extremely difficult to substantiate and likely not be supportable with the power available from this resource pool. Any significant modifications could result in a new

marketing plan which is not the intent of the Program. Therefore, Western is not proposing to adjust or increase current customer allocations.

Other comments received suggested supporting renewable resources as an other appropriate purpose for the resource pool. Comments suggested that any commitment of the resource pool to support renewable resources through allocations should be subject to existing laws, regulations, and guidelines set forth in previous marketing initiatives, specifically the requirement that any applicant must meet preference status. Western agrees that any use of the resource pool must comply with existing laws, regulations, and guidelines, and must be made to preference entities. Western has allocated power to the majority of eligible preference entities within the P-SMBP-ED marketing area. Should a renewable resource program be developed using power from this resource pool, Western would be withdrawing power from entities across the region to develop a very small renewable program available to these same entities. Western believes the best manner to support renewable resources with this power is to allow existing customers to retain the power that may be available after allocating to new customers. This will allow all preference entities across the marketing area to leverage this power and use existing allocations to support renewable resources if they so choose. Western recognizes that many customers are already demonstrating support of renewable resources through their investments in various wind projects across the P-SMBP-ED marketing area near Moorhead, Minnesota; Lincoln, Nebraska; Grand Forks, Minot, and Valley City, North Dakota; and also in Chamberlain and Howard, South Dakota. Wind projects are being developed and implemented by Western's customers regardless of any potential new allocation from this resource pool.

#### Use of the Post-2005 Resource Pool

Based on examination of the Letters of Interest, Western has determined the resource pool should be made available to new preference customers and is not proposing to use a share of the resource pool for other appropriate purposes. Allocations to new preference customers shall be made in accordance with the P-SMBP-ED Final Post-1985 Marketing Plan (45 FR 71860) (Post-1985 Marketing Plan) and the Program. Western intends to carry forward the key principles and criteria that were

established in the Post-2000 Resource Pool, except as modified herein.

#### The Proposed Post-2005 Resource Pool Allocation Procedures

These proposed procedures for the P-SMBP-ED address (1) eligibility criteria; (2) how Western plans to allocate the resource pool in accordance with the Program to eligible applicants as new preference customers and not for other appropriate purposes; and (3) the terms and conditions under which Western will sell the power allocated.

##### I. Amount of Pool Resources

Western proposes to allocate up to 1 percent (approximately 20 megawatts) of the P-SMBP-ED long-term firm hydroelectric resource available as of January 1, 2006, as firm power to eligible new preference customers. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

##### II. General Eligibility Criteria

Western proposes to apply the following general eligibility criteria to applicants seeking an allocation of firm power under the proposed Post-2005 Resource Pool Allocation Procedures.

A. Qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Qualified applicants must be located within the currently established P-SMBP-ED marketing area.

C. Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P-SMBP-ED firm power allocation. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement.

D. Qualified utility and non-utility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have met utility status by January 1, 2003. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self

Determination Act of 1975, 25 U.S.C. 450b, as amended.

##### III. General Allocation Criteria

Western proposes to apply the following general allocation criteria to applicants seeking an allocation of firm power under the proposed Post-2005 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercise of its discretion under Federal Reclamation Law.

B. An allottee will have the right to purchase firm power only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P-SMBP-ED marketing area. This marketing area includes Montana (east of the Continental Divide), North Dakota, South Dakota, and specific areas in western Iowa, western Minnesota and eastern Nebraska. The marketing area of the P-SMBP-ED is Montana east of the Continental Divide, all of North and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and thence northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on the actual load experienced in calendar year 2002. Western has the right to use estimated load values should actual load data not be available. Western will adjust inconsistent estimates during the allocation process.

E. Allocations made to qualified utility and non-utility applicants will be based on the actual loads experienced in calendar year 2002. Western will apply the Post-1985 Marketing Plan and the Program criteria to these loads. Western will carry forward key principles and criteria established in the Post-2000 Resource Pool, except as modified herein.

F. Energy provided with firm power will be based upon the customer's monthly system load pattern.

G. Any electric service contract offered to a new customer shall be executed by the customer within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm

power not under contract will be used as determined by Western.

**I. The minimum allocation shall be 100 kilowatts (kW).**

J. The maximum allocation for qualified utility and non-utility applicants shall be 5,000 kilowatts (kW).

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western retains the right to provide the economic benefits of its resources directly to the tribes.

**IV. General Contract Principles**

Western proposes to apply the following general contract principles to all applicants receiving an allocation of firm power under the proposed Post-2005 Resource Pool Allocation Procedures.

A. Western shall reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project pumping requirements, by giving a minimum of 5 years' written notice in advance of such action.

B. Western, at its discretion and sole determination, shall reserve the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process by Western.

C. Each allottee is ultimately responsible for obtaining its own third-party delivery arrangements. Western may assist the allottee in obtaining third-party transmission arrangements for delivery of firm power allocated under these procedures to new customers.

D. Contracts entered into under the Post-2005 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from January 1, 2006, through December 31, 2020.

E. Contracts entered into as a result of the proposed procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

F. Contracts entered into will include provisions for a reduction of up to 1 percent of the current contracted rate of delivery effective January 1, 2011, in accordance with the Program.

**V. Applications for Firm Power**

This notice formally requests applications from qualified entities

wishing to purchase power from the Upper Great Plains Customer Service Region. Applicant Profile Data (APD) is requested so Western will have a uniform basis upon which to evaluate the applications. To be considered, applicants must submit an application to the Upper Great Plains Customer Service Region as requested below. To ensure that full consideration is given to all applicants, Western will not consider applications submitted before publication of this notice or after the deadlines specified in the Dates Section. Applications are available upon request or may be accessed at <http://www.wapa.gov/ugp/contracts/post2005/APD.htm>. Applicants are encouraged to use the application form provided at the above Web site.

**A. Applicant Profile Data Application**

The content and format of the APD are outlined below. Requested information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that is not applicable. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the organization seeking the allocation. The APD shall consist of the following:

**1. Applicant**

a. Applicant's (entity requesting a new allocation) name and address.

b. Person(s) representing applicant: Please provide the name, title, address, telephone and fax number, and e-mail address of such person(s).

c. Type of organization: For example, Federal or state agency, irrigation district, municipal, rural, or industrial user, municipality, Native American tribe, public utility district, or rural electric cooperative. Please provide a brief description of the organization that will interact with Western on contract and billing matters and whether the organization owns and operates its own electric utility system.

d. Parent organization of applicant, if any.

e. Name of members, if any.

f. Applicable law under which the organization was established.

g. Applicant's geographic service area: if available, submit a map of the service area, and indicate the date prepared.

**2. Loads**

a. Utility and Non-utility Applicants:

i. If applicable, number and type of customers served; e.g., residential,

commercial, industrial, military base, agricultural.

ii. The actual monthly maximum demand (in kilowatts) and energy use (in kilowatt-hours) experienced in calendar year 2002.

b. Native American Tribe Applicants:

i. If applicable, number and type of customers served; e.g., residential, commercial, industrial, military base, agricultural.

ii. The actual monthly maximum demand (in kilowatts) and energy use (in kilowatt-hours) experienced in calendar year 2002.

iii. If actual demand and energy data is not available, provide estimated monthly demand (in kilowatts) with a description of the method and basis for this estimated demand.

**3. Resources**

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide capacity and location.

b. Status of power supply contract(s), including a contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

**4. Transmission**

a. Point(s) of delivery: Provide the preferred point(s) of delivery on Western's system or a third-party's system and the required service voltage.

b. Transmission arrangements: Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Provide a single-line drawing of applicant's system, if one is available.

5. Other Information: The applicant may provide any other information pertinent to receiving an allocation.

6. Signature: The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation is required.

**B. Western's Consideration of Applications**

1. When Western receives the APD, Western will verify the general eligibility criteria set forth in Section II have been met, and that all items requested in the APD have been provided.

a. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 15 days from the date on Western's letter of request to provide the information.

b. If Western determines the applicant does not meet the general eligibility



criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western will determine the amount of firm power to be allocated pursuant to the general allocation criteria set forth in Section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. All firm power shall be allocated according to the procedures in the general allocation criteria set forth in Section III.

3. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by the applicant in its APD.

#### VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

#### VII. Small Business Regulatory Enforcement Fairness Act

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

#### VIII. Determination 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

#### IX. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in 60 FR 53181, October 12,

1995. Western's NEPA review assured all environmental effects related to these actions have been analyzed.

Dated: February 13, 2003.

**Michael S. Hacsakaylo,**

*Administrator.*

[FR Doc. 03-4993 Filed 3-3-03; 8:45 am]

**BILLING CODE 6450-01-P**

### DEPARTMENT OF ENERGY

#### Western Area Power Administration

#### Pick-Sloan Missouri Basin Program—Eastern Division—Proposed Extension of the Transmission Service Rate Schedules—Rate Order No. WAPA-100

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Extension of the Transmission Service Rate Schedules.

**SUMMARY:** This action is a proposal to extend the existing Pick-Sloan Missouri Basin Program—Eastern Division (P-SMBP-ED) Transmission Service Rate Schedules UGP-AS1, UGP-AS2, UGP-AS3, UGP-AS4, UGP-AS5, UGP-AS6, UGP-FPT1, UGP-NFPT1, and UGP-NT1 of Rate Order No. WAPA-79, through September 30, 2005. The existing Transmission Service Rate Schedules will expire July 31, 2003. These Transmission Service Schedules contain formulary rates that are recalculated from yearly updated financial and load data. This notice of proposed extension of rates is issued pursuant to 10 CFR part 903.23(a)(1). Consistent with these regulations, Western Area Power Administration (Western) will not hold a consultation and comment period.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, (406) 247-7388, or e-mail [riehl@wapa.gov](mailto:riehl@wapa.gov).

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 00-0037.00 effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to

disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204-108 and existing Department of Energy procedures for public participation in rate adjustments at 10 CFR part 903, Western's P-SMBP-ED Transmission Service Rate Schedules were submitted to FERC for confirmation and approval on August 3, 1998. On November 25, 1998, in Docket No. EF98-5031-000 at 85 FERC ¶ 61,273, FERC issued an order confirming, approving, and placing into effect on a final basis the Transmission Service Rate Schedules for the P-SMBP-ED. The Transmission Service Rate Schedules, Rate Order No. WAPA-79, were approved for 5 years beginning August 1, 1998, and ending July 31, 2003.

Western is currently evaluating several options for joining the Midwest Independent System Operator, a FERC-approved Regional Transmission Organization. That decision could redefine our current rate provisions. Therefore, Western believes it is premature to proceed with a formal rate process at this time. Extending the existing Transmission Service Rate Schedules to September 30, 2005, should provide enough time to complete our evaluation process. Western proposes to extend the current rate schedules pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA-79 will be extended under Rate Order No. WAPA-100.

Western's existing formulary Transmission Service Rate Schedules, which are recalculated annually, would sufficiently recover project expenses (including interest) and capital requirements through September 30, 2005.

All documents made or kept by Western for developing the proposed extension of the Transmission Service Rate Schedules will be made available for inspection and copying at the Upper Great Plains Customer Service Region, located at 2900 4th Avenue North, Billings, Montana.

Thirty days after publication of this notice Rate Order No. WAPA-100 will be submitted to the Deputy Secretary for approval through September 30, 2005.

Dated: February 14, 2003.

**Michael S. Hacsakaylo,**

*Administrator.*

[FR Doc. 03-4995 Filed 3-3-03; 8:45 am]

**BILLING CODE 6450-01-P**



**ENVIRONMENTAL PROTECTION AGENCY****[FRL-7457-7]****A National Agenda for the Environment and the Aging: Setting Priorities for Research and Education To Address Environmental Hazards That Threaten the Health of Older Persons****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of public listening sessions and request for comments.

**SUMMARY:** In October 2002 EPA launched an Aging Initiative to study the effects of environmental health hazards on older persons and examine the impact that a rapidly aging population will have on the environment. The Initiative will also identify model programs that will provide opportunities for older persons to volunteer in their communities to reduce environmental hazards and protect the environment for future generations. EPA is seeking public comment through Friday, May 16, 2003 to assure that the final agenda includes input from the broadest base of expertise including Federal, State, local and tribal governments, public and private organizations, professional health, aging and environmental associations, academia, business and volunteer organizations, and others including older Americans and their families. EPA encourages comments from all those interested in addressing environmental health hazards that affect the health of older persons.

In addition, six public listening sessions will be held this Spring to gather input for the National Agenda. The meetings are open to the public. Pre-registration is required due to the limited seating capacity at each location. When registering to attend or present comments during the public listening sessions, individuals requiring special accommodations should note their needs so that appropriate arrangements can be made. In addition, every effort will be made to ensure that non-English speaking persons can participate in public meetings and through written comments.

**Public Listening Sessions****DATES:**

	Registration deadline*
1. Thursday, April 3, 2003, 1:30–3:30 p.m., Tampa, FL.	March 26.
2. Tuesday, April 8, 2003, 1:30–3:30 p.m., San Antonio, TX.	April 1.

	Registration deadline*
3. Tuesday, April 15, 2003, 1:30–3:30 p.m., Iowa City, IA.	April 8.
4. Wednesday, April 23, 2003, 2–4 p.m., Pittsburgh, PA.	April 16.
5. Tuesday, April 29, 2003, 1:30–3:30 p.m., Los Angeles, CA.	April 22.
6. Wednesday, May 7, 2003, 1:30–3:30 p.m., Baltimore, MD.	April 29.

\*Pre-registration is required.

**ADDRESSES:**

1. *Tampa* Auditorium, University of South Florida College of Public Health, 13201 Bruce B. Downs Boulevard, Tampa, Florida
2. *San Antonio* University Auditorium, University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, Texas
3. *Iowa City* Second Floor Ballroom, Iowa Memorial Union, the University of Iowa, Corner of Jefferson and Madison Streets, Iowa City, Iowa
4. *Pittsburgh* Pennsylvania Room, First Floor, Pittsburgh Athletic Association, 4215 Fifth Avenue (Oakland area), Pittsburgh, Pennsylvania
5. *Los Angeles* Grand Horizon Room, 3rd Floor, Covell Commons, Sunset Village on the UCLA campus, Los Angeles, California
6. *Baltimore* Auditorium, School of Nursing, University of Maryland Baltimore, 655 West Lombard Street (corner of Lombard and Penn), Baltimore, Maryland

For additional information, contact Kathy Sykes, EPA's Aging Initiative Coordinator, at 202–564–2188 or by email: [aging.info@epa.gov](mailto:aging.info@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA's Aging Initiative is working with various partners on the development of a National Agenda on the Environment and the Aging

1. *Tampa* University of South Florida; West Central Florida Area Agency on Aging
2. *San Antonio* University of Texas Health Science Center at San Antonio; Bexar County Area Agency on Aging
3. *Iowa City* University of Iowa College of Public Health and The Center on Aging; The Heritage Agency
4. *Pittsburgh* University of Pittsburgh Graduate School of Public Health; Allegheny Area Agency on Aging
5. *Los Angeles* University of California Los Angeles (UCLA) Graduate School of Public Health, UCLA Center on Aging, City of Los Angeles Department of Aging; Los Angeles County Area Agency on Aging

6. *Baltimore* University of Maryland Baltimore School of Medicine and Center for Research on Aging, University of Maryland Baltimore School of Nursing

At the beginning of each public listening session an EPA official will describe the process that will be used to develop the National Agenda on the Environment and the Aging. Public comments will follow from pre-registered speakers who wish to contribute to the agenda by offering brief comments on one or all of the three priority areas described below. Each presentation will be limited to three minutes and the written or preferably typed statement of the comments must be provided in advance. Please fax your statement to (202) 564–2733 no later than the registration deadline for the session you have selected (see above for listing of deadlines). There is no page limitation on written comments.

If time allows, members of the audience will have an opportunity to provide comments. Pre-registration is required for attendance at each session and for providing comments due to limited seating and time. To register to attend or participate, go to <http://www.epa.gov/aging> and click on the "Public Listening Sessions" side bar and follow instructions to register to attend or to speak. Deadlines to pre-register for each session are provided.

**National Agenda for the Environment and the Aging***Setting Priorities for Research and Education to Address Environmental Hazards That Threaten the Health of Older Persons*

In October 2002 EPA launched an Aging Initiative to study the effects of environmental health hazards on older persons and examine the impact that a rapidly aging population will have on the environment. The Initiative will also identify model programs that will provide opportunities for older persons to volunteer in their communities to reduce environmental hazards and protect the environment for future generations. EPA is seeking public comment through Friday, May 16, 2003, to assure that the final agenda includes input from the broadest base of expertise including Federal, State, local, and tribal governments, public and private organizations, professional health, aging and environmental associations, academia, business and volunteer organizations, and other stakeholders, including older Americans and their families. EPA encourages comments from all those interested in contributing to the agenda. The agenda

will be developed through an open, participatory process. The National Agenda will be composed of three parts:

- (1) Identifying research gaps in environmental health;
- (2) Preparing for an aging society; and
- (3) Encouraging older adults to volunteer to address environmental hazards.

### **I. Identifying Research Gaps in Environmental Health**

#### *Strategy To Address Environmental Hazards That Threaten the Health of Older Persons: Research and Educational Priorities*

The National Agenda for the Environment and the Aging will lay out a strategy that combines research and educational programs that promote preventive actions to address environmental health hazards. One fundamental question is: How do environmental hazards affect older persons differently from younger persons? Understanding the biology underlying differing age-related responses can inform a scientific rationale for decisions on how to appropriately incorporate the differential sensitivity of those who are aging into environmental risk assessment, decisions and actions.

EPA's effort to develop a national agenda to address environmental issues that affect the health and well-being of the nation's older persons has been advanced by a workshop on the "Differential Susceptibility and Exposure of Older Persons to Environmental Hazards" convened by the National Academy of Sciences in December 2002. At that meeting, experts discussed priority issues for the National Agenda on the Environment and the Aging. Experts focused on exposures to environmental hazards found in drinking water, indoor and outdoor air, and food residues that may have health effects including respiratory and cardiopulmonary disease, neurotoxicity, infectious disease and cancer.

EPA invites public comments on environmental hazards that may affect the health of older persons in states and local communities. Among questions which may be considered are:

- What specific environmental exposures in your community particularly affect the health of older persons?
- Which health conditions specific to older adults may increase their susceptibility to chemical toxicants?
- Which lifestyle factors of older adults may increase the exposure to environmental hazards?

- What steps may individuals and communities take to reduce the potential environmental health risks that older adults may face?

### **II. Preparing for an Aging Society**

#### *Impact of an Aging Population on the Environment*

The EPA invites comments on the extent to which an aging population may affect the environment. The nation's demographics will have changed dramatically by 2030: the U.S. population over 65 years of age is expected to double. The largest cohort born in U.S. history (76 million Americans were born between 1946 and 1964) begins to turn 65 in 2011 and will markedly influence the quality of life for both older persons and young people. The National Agenda will focus on the interface between older persons and their environment.

As an increasing number of adults approach retirement age, migration may substantially increase to areas characterized by temperate climates, lower population and traffic density, and better environmental quality. These areas may be sparsely populated and ecologically diverse regions. To ensure harmony between the needs of this growing population and preserving important natural resources, it is important to have the tools available for regional and landscape planning. The EPA invites comments on the extent to which an aging population has unique needs with respect to housing, transportation, health care, recreation, and other quality of life issues, and how these needs may affect the environment. Issues which may be considered include:

- What can city, county and regional planners do to meet the needs of today's older adults and prepare for the anticipated increase in the number of retirees and at the same time enhance preservation of natural resources for recreation, wildlife, water, air and land quality?
- Can you identify unique resource needs and utilization patterns of older adults that may generate novel ecological pressures?
- What steps can individual baby boomers and older adults take to not only reduce potential hazards to the environment but also preserve and enhance the quality of the environment for themselves and future generations?

### **III. Encouraging Older Adults to Volunteer to Reduce Environmental Hazards**

#### *Opportunities for Older Persons To Enhance the Environment and Their Health*

The National Agenda will not only identify strategies to protect the quality of life for older persons from environmental hazards, but also suggest ways to engage the nation's older persons in programs and strategies designed to enhance the environment for all generations.

Many older Americans contribute their time, energy and expertise to protect their environment and educate their communities about environmental hazards to citizens and threats to natural resources. The EPA intends to encourage further involvement and expand opportunities for older persons to volunteer in programs designed to lessen environmental hazards. Programs or activities that are of interest include activities that increase awareness of environmental hazards, and preserve the quality of the environment for today and tomorrow's citizens. The EPA welcomes comments on encouraging older adults to volunteer to reduce environmental hazards in their communities. Among the questions to which the EPA invites comments are the following:

- Which volunteer programs that address environmental hazards in your community warrant examination for possible replication in other communities?
- What incentives are needed to encourage older persons to volunteer their time and ideas to protect the environment, reduce environmental hazards and enhance the health of and the environment for people of all ages?
- In an effort to raise awareness of environmental factors important to all citizens, how can older persons serve as models of good practice and mentors for younger generations about environmental hazards found in the community?
- In your community or state, what intergenerational environmental projects have been successful in improving the health of children or older persons?
- What potential barriers exist to volunteering in your community to reduce environmental hazards?

Public comments will be accepted until Friday, May 16, 2003.

(1) To pre-register to attend or speak at a public listening session, please go to EPA's Aging Initiative Web site: <http://www.epa.gov/aging>.

(2) To submit written comments, please send them by mail or hand deliver to: EPA's Aging Initiative, Mail Code 1107A, 1200 Pennsylvania Avenue, NW., Room 2512 Ariel Rios North, Washington, DC 20460, or

(3) Fax comments to: National Agenda for the Environment and the Aging (202) 564-2733, or

(4) E-mail comments to: [aging.info@epa.gov](mailto:aging.info@epa.gov).

Dated: February 26, 2003.

**Joanne Rodman,**

*Acting Director, Office of Children's Health Protection.*

[FR Doc. 03-5031 Filed 3-3-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7457-6]

### EPA Science Advisory Board, Environmental Health Committee, Notification of an Upcoming Meeting and Request for Information on the Proposed Panel for the Review of the Supplemental Guidance for Assessing Cancer Susceptibility From Early-life Exposure to Carcinogens (SGACS)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Request for Information on the Panel and Notification of an Upcoming Meeting.

**DATES:** April 24, 2003—Teleconference meeting of the Environmental Health Committee Submissions concerning the proposed panel are due by March 18, 2003.

**ADDRESSES:** U.S. EPA Science Advisory Board (1400A), Suite 6450P EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0001 (zip code for FedEx—20004).

**FOR FURTHER INFORMATION CONTACT:** Dr. Suhair Shallal, Designated Federal Officer, by telephone/voice mail at (202) 564-4566, by fax at (202) 501-0582; or via e-mail at [shallal.suhair@epa.gov](mailto:shallal.suhair@epa.gov). General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: <http://www.epa.gov/sab>.

#### SUPPLEMENTARY INFORMATION:

1. *Background on the EPA Science Advisory Board:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is providing notification of an upcoming meeting and requesting information on the proposed SCAGS review panel.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific

and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Those selected to serve on the SCAGS review panel will review the draft materials identified in this notice and respond to the appropriate charge questions. Upon completion, the panel's report will be submitted to the SAB executive committee for final approval.

2. *Background on this advisory activity:* Pursuant to a request by EPA's Office of Research and Development, the SAB will conduct a peer review of the draft document entitled Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens. In a separate FR Notice, EPA announced the availability of, and the opportunity to comment on the above mentioned document.

The SAB was selected to lead this review due to its experience in reviewing various documents associated with the EPA's Draft Cancer Guidelines and the relevance of the expertise of its members to this review. In 1996, EPA published for public comment proposed revisions to EPA's 1986 Guidelines for Carcinogen Risk Assessment (61 FR 17960, April 23, 1996). Since the 1996 proposal, EPA's Science Advisory Board (SAB) has conducted three scientific peer reviews. In February 1997, the Science Advisory Board's Environmental Health Committee (SAB EHC) was asked to review the proposed revisions to the Agency's first cancer guidelines issued in 1986 (<http://www.epa.gov/sab/pdf/ehc9710.pdf>). In January 1999, the EHC met again to consider selected sections of the draft Guidelines that were revised to address recommendations from the public and the earlier SAB review (1997) of the Guideline (<http://www.epa.gov/sab/pdf/ec15.pdf>). A third meeting took place in July 1999 to provide advice and comment to the EPA on issues related to applying the provisions of EPA's proposed revised Cancer Risk Assessment Guidelines to children (<http://www.epa.gov/sab/pdf/ec0016.pdf>).

Availability of the Meeting Materials—The materials for this review are available from the Office of Research and Development's National Center for Environmental Assessment, Risk Assessment Forum Web site, located at: <http://cfpub.epa.gov/ncea/raf/index.cfm>. For questions and information concerning the materials, please contact Dr. William P. Wood,

U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; tel. (202) 564-3361, or e-mail: [risk.forum@epa.gov](mailto:risk.forum@epa.gov).

3. *Meeting via Teleconference of the Environmental Health Committee—April 24, 2003:* Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Environmental Health Committee of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday, April 24, 2003 via teleconference at 3 p.m.–5 p.m. Eastern Standard Time (EST) to begin the review of the EPA's Office of Research and Development draft document entitled, Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens (SGACS). This document provides a possible approach for assessing cancer susceptibility from early-life exposure to carcinogens. The purpose of the teleconference is: (a) To discuss the charge and the adequacy of the review materials provided to the SGACS Review Panel; (b) to clarify any questions and issues relating to the charge and the review materials; (c) to discuss specific charge assignments to the SGACS Review Panelists; and (d) to clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting. All times noted are Eastern Standard Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews or consultations are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents generated by the SAB and the relevant Program Office is included above.

The meeting will begin on April 24, 2003 at 3 p.m. EST and adjourn no later than 5 p.m. EST that day. The meeting will be held at EPA Headquarters, Washington, DC, Ariel Rios North, room 6013. For further information concerning this meeting, please contact the individuals listed at the beginning of this **Federal Register** notice. A copy of the draft agenda for the meeting will be posted on the SAB Web site ([www.epa.gov/sab](http://www.epa.gov/sab)) (under the AGENDAS subheading) approximately 10 days before the meeting. Information concerning a subsequent face to face meeting will be forthcoming in a separate **Federal Register** notice.

Providing Oral or Written Comments at SAB Meetings—It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any

length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

**Meeting Access—Individuals** requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Zisa Lubarov-Walton ([lubarov-walton.zisa@epa.gov](mailto:lubarov-walton.zisa@epa.gov)) or by telephone/voice mail at (202) 564-4533 at least five business days prior to the meeting date so that appropriate arrangements can be made.

**4. Solicitation of information on the Proposed Review Panel:** To provide the Agency with meaningful input, we have determined that the following expertise is needed for the review: toxicology

including carcinogenicity; biostatistics; epidemiology; pediatrics; radiation biology; risk assessment and the application of the Agency's risk assessment guidelines. As requested by EPA's ORD, the EPA Science Advisory Board's Environmental Health Committee, a standing committee of the Board, will conduct this review. The SAB EHC will be augmented with members from the SAB Radiation Advisory Committee, the FIFRA Science Advisory Panel (SAP) and the Children's Health Protection Advisory Council (CHPAC) to form the SGACS review Panel. By including members of the three EPA advisory bodies in the review of this document, the requesting office hopes to benefit from their unique expertise in children's risk assessment and to receive a peer review report which reflects the views of these bodies on the charge questions in an expedited manner. Therefore, we are not soliciting additional experts for this review.

The SAB Staff Office will post the names and biosketches for members of the review Panel on the SAB Web site at: <http://www.epa.gov/sab>. The public has the opportunity to provide information, analysis or other documentation relevant to the membership of the panel before the SAB Staff Office makes a final decision. Information, analysis or documentation must be received by the Designated Federal Officer (DFO) no later than March 18, 2003. Please see the address/contact information noted above. The complete SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can be found on the SAB's Web site at: <http://www.epa.gov/sab/pdf/ec02010.pdf>.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Information provided by the public will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise,

knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) ability to work constructively and effectively in committees.

Dated: February 26, 2003.

**Robert Flaak,**

*Acting Deputy Director, EPA Science Advisory Board.*

[FR Doc. 03-5029 Filed 3-3-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7457-5]

### Science Advisory Board, Environmental Health Subcommittee; Request for Nominations for Additional Expertise for the Formaldehyde/ Acetaldehyde/Vinyl Acetate Toxicological Reviews (FAVATR) Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Request for nominations.

**DATES:** All nominations are due by March 25, 2003.

**ADDRESSES:** U.S. EPA Science Advisory Board (1400A), Suite 6450P EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001 (zip code for FedEx—20004)

**FOR FURTHER INFORMATION CONTACT:** Dr. Suhair Shallal, Designated Federal Officer, by telephone/voice mail at (202) 564-4566, by fax at (202) 501-0582; or via e-mail at [shallal.suhair@epa.gov](mailto:shallal.suhair@epa.gov). General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: <http://www.epa.gov/sab>.

#### SUPPLEMENTARY INFORMATION:

1. *Background on the EPA Science Advisory Board:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is requesting nominations to add expertise to the Environmental Health Committee.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection

Agency Science Advisory Board, which can be found on the SAB's Web site at: <http://www.epa.gov/sab/pdf/ec02010.pdf>. Those selected to serve on the FAVATR panel will review the draft materials identified in this notice and respond to the charge questions provided below. Upon completion, the panel's report will be submitted to the SAB executive committee for final approval.

**2. Background on this Advisory Activity:** The Agency has requested that the SAB conduct a peer review of the set of three toxicological reviews including: formaldehyde, acetaldehyde, and vinyl acetate. The SAB has been asked to conduct this review because of their previous review of the draft formaldehyde risk assessment update (EPA-SAB-EHC-92-021), the precedent setting nature of the assessments using mode of action and biologically based models, and the high priority with respect to programmatic relevance of these documents.

Formaldehyde, acetaldehyde, and vinyl acetate are all listed as hazardous air pollutants (HAPs) on the Clean Air Act Amendments of 1990 and each is associated with significant ambient exposures. These assessments are required for each to support major regulatory initiatives and methods for program offices. Because of these priorities, all three have been listed for development of toxicological reviews to be included on the Integrated Risk Information System (IRIS).

An overview of the documents to be reviewed can be found on the EPA's National Center for Environmental Assessment website (<http://cfpub.epa.gov/ncea/>). The final draft toxicological review for each chemical (Acetaldehyde, Formaldehyde and Vinyl Acetate) will be released in May 2003.

**3. Tentative Charge to the FAVATR Review Panel.** The overall charge to the FAVATR review panel is to review the set of three (3) IRIS toxicological reviews for consistency in application of the proposed revised cancer guidelines and principles of mode-of-action modeling, with special emphasis on: (a) Weight-of-the-evidence issues to identify key events; (b) the use of pharmacokinetic and pharmacodynamic data; (c) motivation for dose surrogate and effect measures; (d) model structures for interspecies dosimetric adjustment; (e) model structures for dose-response analysis; (f) data-derived uncertainty factors for interspecies and intrahuman variability; and (g) leveraging of data on critical health effects and model structure sharing between routes and across chemically-

related compounds to help inform alignment of the estimates.

**4. SAB Request for Nominations:** The EPA SAB is requesting nominations of individuals who are recognized, national-level experts in one or more of the following disciplines necessary to contribute to the charge questions to be addressed by the FAVATR review panel: (a) Inhalation dosimetry modeling (e.g., computational fluid dynamics (CFD) modeling), (b) physiologically based pharmacokinetic (PBPK) modeling, (c), (d) biologically-based dose-response (BBDR) modeling for cancer, (e) epidemiology, (f) biochemistry, (g) inhalation toxicology and respiratory physiology, (h) gastrointestinal tract toxicology and physiology, (i) pathology, (j) carcinogenesis, (k) respiratory biology and immunology, (l) toxicology (including, genetic, reproductive, developmental), (m) quantitative risk assessment, (n) biostatistics and mathematical modeling.

**5. Process and Deadline for Submitting Nominations:** Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the FAVATR review panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB website. The form can be accessed through a link on the blue navigational bar on the SAB website, [www.epa.gov/sab](http://www.epa.gov/sab). To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations in electronic format may contact Dr. Suhair Shallal at the mailing address given at the end of this notice. Nominations should be submitted in time to arrive no later than March 25, 2003. Any questions concerning either this process or any other aspects notice should be directed to Dr. Shallal.

The EPA Science Advisory Board Staff Office will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: <http://www.epa.gov/sab>, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During

this comment period, the public will be requested to provide information, analysis or other documentation that the SAB Staff should consider in evaluating candidates for the specific expertise to add to the FAVATR review panel.

For the EPA SAB, a balanced review panel (i.e., committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (e.g., financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: <http://www.epa.gov/sab/pdf/epaform3110-48.pdf>. Subcommittee members will likely be asked to attend at least one public face-to-face meeting and several public conference call meetings over the anticipated course of the advisory activity.

The approved policy under which the EPA SAB selects review panels is described in a recent SAB document, EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and

Procedures—An SAB Commentary (EPA-SAB-EC-COM-002-003), which can be found on the SAB's Web site at: <http://www.epa.gov/sab/pdf/ecm02003.pdf>.

Additional information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: <http://www.epa.gov/sab>; and in the EPA Science Advisory Board FY2001 Annual Staff Report, which is available from the EPA SAB Publications Staff at phone: (202) 564-4533; via fax at: (202) 501-0256; or on the SAB Web site at: <http://www.epa.gov/sab/annreport01.pdf>.

Dated: February 26, 2003.

**A. Robert Flaak,**

*Acting Deputy Director, EPA Science Advisory Board.*

[FR Doc. 03-5030 Filed 3-3-03; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

February 21, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 3, 2003. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-7232 or via Internet at [Kim\\_A\\_Johnson@omb.eop.gov](mailto:Kim_A_Johnson@omb.eop.gov), and Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via Internet at [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** *The Commission has requested emergency OMB review of this collection with an approval by March 14, 2003.*

*OMB Control Number:* 3060-0055.

*Type of Review:* Revision of a currently approved collection.

*Title:* Application for Cable Television Relay Service Station Authorization, FCC Form 327.

*Form Number:* FCC 327.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 814.

*Estimated Time per Response:* 3.2 hours.

*Frequency of Response:* On occasion, annual, and five-year reporting requirements.

*Total Annual Burden:* 2,605 hours.

*Total Annual Cost:* \$179,000.

*Needs and Uses:* On May 22, 2002, the FCC adopted a Report and Order (R&O), CS Docket No. 99-250, FCC 02-149, which expanded the class of those eligible to hold Cable Television Relay Service (CARS) licenses to all Multichannel Video Programming Distributors (MVPDs) and, thus, the reporting requirement is imposed on an additional group of persons. Previously, only cable systems and wireless cable systems (MDS and MMDS) were eligible for CARS licenses. CARS is principally a video transmission service used for intermediate links in a distribution network. FCC Form 327 consists of multiple schedules and exhibits, depending upon the specific action for which it is filed—initial applications are the most complete and renewal applications are the briefest. FCC Form 327 is the application for CARS microwave radio license.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-5058 Filed 3-3-03; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 24, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before May 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s) contact Les Smith at 202-418-0217 or via the Internet at [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0647.

*Title:* Annual Survey of Cable Industry Prices.

*Form Number:* N/A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 760.

*Estimated Time per Response:* 7 hours.

*Frequency of Response:* Annual reporting requirements.

*Total annual burden:* 5,320 hours.

*Total Annual Costs:* \$159,600.

*Needs and Uses:* Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The annual Price Survey is intended to collect data needed to prepare this report.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 03-5059 Filed 3-3-03; 8:45 am]

**BILLING CODE 6712-10-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 25, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith Boley Herman at 202-418-0214 or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-0241.

*Title:* Temporary Authorizations.

*Form Nos.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, State, local or tribal government.

*Number of Respondents:* 145.

*Estimated Time Per Response:* .25-2 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 157 hours.

*Total Annual Cost:* \$62,000.

*Needs and Uses:* The Commission is consolidating four information collections into one comprehensive collection covering temporary authorizations. All four collections were under different OMB control numbers but the Commission will retain 3060-0241 as the active OMB control number. All four rule sections require that the licensees of various services file an informal request for special temporary authorization. The data is used to ensure that the temporary authorization of stations will not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-5060 Filed 3-3-03; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

February 21, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-7232 or via Internet at [Kim\\_A.\\_Johnson@omb.eop.gov](mailto:Kim_A._Johnson@omb.eop.gov), and Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via Internet at [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission has requested emergency OMB review of this collection with an approval by February 26, 2003.

*OMB Control Number:* 3060-XXXX.



*Type of Review:* New collection.

*Title:* Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 200.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement.

*Total Annual Burden:* 400 hours.

*Total Annual Cost:* None.

*Needs and Uses:* On October 10, 2002, the FCC adopted a First Report and Order (Order), MM Docket No. 99–325, FCC 02–286, in which the Commission selects in-band, on-channel (IBOC) as the technology that will permit AM and FM radio broadcasters to introduce digital operations efficiently and rapidly. In addition, provisions of the Order require radio station licensees to provide information relative to implementation of interim hybrid digital operations. Implementation of hybrid digital operations is entirely voluntary. Commercial and noncommercial AM and FM radio stations that choose to begin hybrid digital transmissions must notify the FCC within 10 days of the commencement of digital operations. The notification letter shall certify that the digital operations conform to applicable rule and standards. Furthermore, implementation of the notification letter will eliminate both the need for the FCC staff to issue an STA to the broadcaster and for the broadcaster to file and pay the initial and any subsequent filing fees.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–5061 Filed 3–3–03; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–494]

### Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission notifies the public, State Telecommunications Relay Service (TRS) programs, and TRS providers that

TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

**DATES:** Interested parties may file comments in this proceeding no later than April 1, 2003. Reply comments may be filed no later than April 21, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail [emyers@fcc.gov](mailto:emyers@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, CC Docket 98–67, released February 24, 2003. This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at [http://www.fcc.gov/cgb/dro/trs\\_by\\_state.html](http://www.fcc.gov/cgb/dro/trs_by_state.html). They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Interested parties may file comments in this proceeding no later than April 1, 2003. Reply comments may be filed no later than April 21, 2003. When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full

name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via e-mail in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 6–A432, Washington, DC 20554. The e-mail should be submitted to Erica Myers at [emyers@fcc.gov](mailto:emyers@fcc.gov). Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in “read only” mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67), type of pleading (comment or reply



comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or e-mail at [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This *Public Notice* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

### Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601-605. Current state certifications expire July 25, 2003. Applications for certification, covering the five-year period of July 26, 2003 to July 25, 2008, must demonstrate that the State TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS-17-02

Public Utility Commission of Texas  
State of Texas

File No: TRS-61-02

U.S. Virgin Islands Public Utilities  
Commission  
U.S. Virgin Islands

Federal Communications Commission.

**Margaret M. Egler,**

*Deputy Chief, Consumer & Governmental  
Affairs Bureau.*

[FR Doc. 03-5057 Filed 3-3-03; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MARITIME COMMISSION

[Docket No. 03-02]

### **XM International, Inc v. Brilliant Logistics Group, Inc.; Notice of Filing of Complaint and Assignment**

XM International, Inc. ("XM") has filed a complaint against Brilliant Logistics Group, Inc. ("BLG"). XM states that it imports various commodities from the Far East, and that BLG is a licensed Ocean Transportation Intermediary ("OTI") and importer.

XM states that it has a service contract with COSCO Container Lines Company Limited ("COSCO"). XM contends that BLG's representatives asked XM to ship BLG cargo under its contract by claiming that the cargo belonged to XM or an XM subsidiary authorized under the contract. XM claims that BLG offered to pay it for this arrangement. XM rejected this proposal. XM contends that, notwithstanding its rejection, BLG surreptitiously shipped under XM's contract rates by using XM's contract number, and misrepresenting that it was XM's cargo rather than its own (XM advises that this practice is referred to as "code-loading" in the industry). XM alleges that BLG violated section 10(a)(1) of the Shipping Act of 1984 ("Shipping Act") by knowingly and willfully obtaining ocean transportation through an unfair device or means. XM states that it has been damaged because when COSCO became aware of these shipments, it increased the contract's rates and limited the space made available to XM, forcing it to ship on other shipping lines at higher rates. Also, XM contends it lost two customers due to the higher prices attributable to the increased freight charges.

XM asks that BLG be required to answer its charges, and that after hearing, an order be made commanding BLG to: Cease and desist from the alleged Shipping Act violations; establish and put in force such practices as the Commission determines to be lawful and reasonable; pay XM \$1,490,000 in reparations for the unlawful conduct, with interest and attorney's fees or such other sum as the Commission determines to be proper as an award of reparations; and such further order or orders as the Commission determines to be proper.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution, such as those described in subpart U of the Commission's rules of practice and procedure, 46 CFR 502.401-502.411.

The hearing, if any, shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 24, 2004, and the final decision of the Commission shall be issued by June 23, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03-4960 Filed 3-3-03; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL RESERVE SYSTEM

### **Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2003.

**A. Federal Reserve Bank of Atlanta**  
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *SNB Bancshares, Inc.*, Macon, Georgia; to acquire 100 percent of the voting shares of Bank of Gray, Gray, Georgia.

**B. Federal Reserve Bank of Minneapolis** (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *TCF Financial Corporation*, Wayzata, Minnesota; to acquire up to an additional 5.10 percent of the voting shares of TransCommunity Bankshares Incorporation, Richmond, Virginia, thereby increasing its ownership interest to no more than 9.99 percent and thereby indirectly acquire Bank of Powhatan, National Association, Powhatan, Virginia and Bank of Goochland, National Association, Goochland, Virginia.

Board of Governors of the Federal Reserve System, February 26, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-5013 Filed 3-3-03; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**TIME AND DATE:** 11 a.m., Monday, March 10, 2003.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Assistant to the Board; 202-452-2955.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a *recorded announcement* of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an *electronic announcement* that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 28, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-5141 Filed 2-28-03; 11:55 am]

**BILLING CODE 6210-01-P**

## GENERAL SERVICES ADMINISTRATION

### Notice of Availability (NOA) of the Record of Decision for the Environmental Impact Statement (EIS) for the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA; Record of Decision, Master Plan Expansion for Chamblee Campus Centers for Disease Control, Chamblee, GA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and GSA Order PBS P 1095.4E.F.2, PBS 1095.4C, ADM 1020.1, GSA has prepared an Environmental Impact Statement (EIS) for the Centers for Disease Control (CDC). The Proposed Action is the implementation of a Master Plan at the Chamblee Campus. The purpose of the EIS is to provide public notice of the Proposed Action and Alternatives, reasonable time for public comment, and to develop and implement mitigation measures based on the impacts identified.

#### A. Proposed Action

The Centers for Disease Control and Prevention (CDC) is an agency of the U.S. Department of Health and Human Services (HHS) with a critical mission to safeguard the health of the American public through detection, investigation, control, and prevention of communicable diseases. The Proposed Action is the implementation by the CDC of a Master Plan to expand and upgrade facilities at the Chamblee Campus. The Chamblee Campus currently consists primarily of buildings constructed between 1940 and 1993, many of which no longer satisfy the

essential technical needs of CDC programs. Chamblee is one of two primary CDC campuses in the Atlanta Metro Area; the other is the main Roybal Campus and CDC Headquarters at Clifton Road. The Proposed Action would also consolidate leased facilities onto the Chamblee Campus and would accommodate the projected CDC growth at the Chamblee Campus to the year 2010 and beyond.

The Chamblee Campus is home to the National Center for Environmental Health (NCEH) and the Division of Parasitic Diseases (DPD). The Current laboratories at Chamblee Campus operate at a maximum bio-safety level (BSL) of 2 on a bio-safety scale of 1 (lowest) to 4 (highest). Practices, equipment, and facilities at BSL 2 are applicable to clinical, diagnostic, teaching and other facilities in which work is done with moderate-risk agents. The CDC anticipates an increase in personnel at the Chamblee Campus from a current staff of approximately 700 employees to approximately 4,000 in ten years. To accommodate this growth, the Master Plan provides for demolition of 17 outdated buildings, the construction of four new buildings, as well as the renovation of several other buildings on the existing 48.5-acre property. The Master Plan incorporates CDC's current inventory of 245,500 net usable square feet (NUSF) of office and laboratory space. This includes two buildings (#103 and #109) that are currently under construction to replace space from buildings recently demolished. The Master Plan would meet a cumulative need for 706,200 NUSF of space. Additional parking would be required to increase capacity from the current total of 591 spaces to 3,390 spaces at completion of full build-out. Design and construction of specific buildings, associated parking, and support facilities would be based on year-by-year Federal appropriations to fund individual projects. The General Services Administration (GSA) has prepared the EIS for the CDC and is serving as the lead agency for the NEPA process. However, the CDC will be responsible for implementing all aspects of the Proposed Action including, planning, designing, contracting, construction management, physical security, and operations and maintenance for new facilities.

#### B. Purpose and Need

The purpose of the Proposed Action is to enable the CDC to perform its public health and safety missions effectively and to better utilize Federal property and assets. The need for the

Proposed Action is dictated in part by national security due to the importance of the CDC missions. The Proposed Action is needed to: Facilitate the performance of CDC's National missions. Alleviate overcrowded and substandard space and conditions at the Chamblee Campus, Consolidate CDC Chamblee programs that are currently performed at leased facilities. Accommodate projected growth in CDC programs associated with expanding missions. Provide campus environment that meets building codes and security requirements. Improve internal pedestrian and traffic flow.

### C. Alternatives Considered

#### *No-Action Alternative*

The No-Action Alternative would maintain the status quo at the Chamblee Campus, perpetuating the use of overcrowded substandard buildings and continued reliance on off-campus leased space to support programs. Under this alternative, construction, renovation, traffic improvements, and other components of the Proposed Action, would not be implemented. The impacts of the No-Action Alternative on the natural and human environment were evaluated based on extrapolations of current traffic, building density, and other conditions for the same 10-year planning period as used to evaluate the Proposed Action.

#### *Chamblee Campus Master Plan Implementation Alternative*

Under the Master Plan Implementation Alternative, which is the Government's preferred alternative, CDC would construct eight new buildings, including parking decks and a central utility plant, on the Chamblee Campus and demolish 17 existing obsolete buildings over a 10-year planning period. These activities would be restricted to the existing disturbed areas of the campus comprising 26 acres, except for approximately two acres of upland vegetated area in the southwestern portion of the property and a strip of upland fringe on the eastern side of the developed area. The balance of approximately 20 acres, including 11.4 acres of floodplains and 4.6 acres of jurisdictional wetlands, is currently vegetated and would remain undisturbed during implementation of the Master Plan. Any future activity that would disturb this 20-acre area would require additional NEPA compliance as outlined the EIS.

#### *Evaluation Approach and Future Tiering*

The Chamblee Campus Master Plan is intended as a steering document rather than a detailed blueprint. The phasing of actions proposed in the plan must remain flexible due to uncertainties regarding the availability and timing of Federal funds. Therefore, the approach taken in this EIS for the evaluation of the Master Plan Implementation Alternative assumes that the exact locations and configurations of facilities, and activities supported, will be determined after the completion of this EIS. In the event that specific future actions are beyond the information outlined in the Master Plan and the assumptions followed for this EIS, subsequent NEPA documentation will be required consistent with the tiering process outlined in the CEQ regulations (40 CFR 1502.20). Such documentation may consist of Categorical Exclusions (at a minimum), site-specific Environmental Assessments (more likely), or an addendum/amendment to this EIS if appropriate. Chapter II provides specific examples of future actions that would be subject to tiering review.

### D. Environmental Consequences to Affected Environment

The environmental consequences of implementing this Proposed Action and mitigation measures identified are summarized below.

#### *Aesthetics*

Due to the age and condition of various buildings and structures on site, continuing deterioration of these facilities will occur with the No-Action Alternative and there will be no adverse aesthetic impacts. The Master Plan Alternative would improve the aesthetic quality of the campus by eliminating overcrowded and deteriorating facilities, improving pedestrian and vehicle circulation, and upgrading landscaped areas. Short-term adverse impacts during construction would be restricted to previously disturbed areas of the campus.

#### *Geophysical Resources*

The No-Action Alternative would not affect geologic features or soil conditions on the campus. Demolition and construction activities for the Master Plan Alternative would not significantly affect geologic features or soils on the property. Construction would be limited generally to the previously disturbed areas of the campus, which are underlain by Urban Land soils that have been altered during prior development. Construction for the

Master Plan Alternative will include use of best management practices (BMPs) that generally comply with the Soil Erosion and Sedimentation Control Ordinance of the City of Chamblee (Municipal Code, Part II, Chapter 34, Article IV) and the DeKalb County Code (Chapter 14, Article II, Section 14-38), to reduce soil erosion and sedimentation impacts.

#### *Surface Water Resources*

The No-Action Alternative would not alter surface waters, drainage, floodplains, or wetlands on the campus, because there would be no change in existing structures and uses on site. With appropriate uses of BMPs during construction, compliance with the General Storm Water Permit requirements, and implementation of the SWMP, the Master Plan Alternative would be in compliance with state and local regulations and would provide a net benefit over existing water resource conditions.

#### *Biological Resources*

There are no critical species or habitats on the Chamblee Campus for any Federally or state-protected rare, threatened or endangered species listed under the Endangered Species Act (1973). The No-Action Alternative would not affect flora and fauna on the campus. The Master Plan Alternative would not have adverse impacts on wildlife or plant species. No Federally or state-protected rare, threatened, or endangered species listed under the Endangered Species Act (1973) will be impacted.

#### *Cultural Resources*

Based on consultation with the Georgia State Historic Preservation Officer (SHPO) as documented in Chapter VIII, no archeological resources have been identified on the campus, and none of the structures designated for future demolition are eligible for the National Register of Historic Places (NRHP). Therefore, the Proposed Action would have no impact on cultural resources.

#### *Demographics and Socioeconomic*

Under the No-Action Alternative, future operations at the Chamblee Campus would have no effect on population, housing, economic activity, or employment in the city and county. The Master Plan Alternative would not adversely affect population growth in DeKalb county either directly or indirectly. The exposure of local businesses on Buford Highway and the International Village to increasing numbers of employees at the nearby

Chamblee Campus may have a favorable impact on local services and retail commerce. The potential increase in trade opportunities for local businesses may have a small impact on the demand for local housing. The increase in jobs at the campus would provide a net favorable effect on employment for the City of Chamblee but have no impact on countywide employment, because relocations by significant numbers of existing CDC employees would not be expected. Nearby leased space to be vacated by CDC in conjunction with the Master Plan would be absorbed by the regional commercial real estate market without measurable effect over the 10-year planning period.

#### *Environmental Justice (EJ)*

Under the No-Action Alternative, existing operations would continue at Chamblee Campus and at offsite, leased facilities without environmental Justice consequences. However, because there would be no change in the number of employees on site, there would be no potential for local economic stimulus from CDC actions. The Master Plan Alternative would not adversely and disproportionately affect minority and low-income groups who live near the Chamblee Campus. As indicated in Chapter 4, the distributions of minorities and low-income groups in the immediate vicinity of the campus are not substantially greater than in the broader local community. Also, the campus would perform essentially the same programs it currently performs without any change in bio-safety level (currently BSL 2) for laboratories onsite. All Master Plan activities would occur on existing Federal property; hence, the Federal government would not purchase any additional land for the Proposed Action, and there would be no impact on the tax base. The improvements would add over 3,000 more employees to the Chamblee Campus, which would add to the local employment base. Through potential increased patronage by greater numbers of employees on the campus, the Master Plan Alternative may also benefit nearby businesses, such as restaurants, shops, and service establishments that employ higher proportions of minorities and the economically disadvantaged. In this way, the Master Plan Alternative—would potentially support the economic development plans of the City of Chamblee and DeKalb County for the nearby DeKalb International Corridor.

#### *Community Services*

After the events of September 11, 2001, CDC assessed security at the Chamblee Campus to insure the

appropriate level of protection for facilities, staff, and the surrounding community. CDC has also improved the coordination of emergency response activities with the DeKalb Homeland Security Office and the Governors Office for Homeland Security. Under the No-Action Alternative, future operations at the Chamblee Campus would not affect responsibilities of the Chamblee Police Department, the DeKalb Fire Services Bureau, regional medical facilities, the DeKalb County Public School System, or park authorities in the city and county. However, the No-Action Alternative also would not resolve potential existing deficiencies in water distribution on campus to provide adequate fire response, as indicated by CDC's engineering consultant. The increase in facilities and staff operations at the Chamblee Campus envisioned in the Master Plan Alternative will emphasize the needs for security and emergency coordination by CDC. The size of the campus and extent of developed area will remain unchanged within the existing perimeter. Therefore, the Master Plan alternative would not have adverse impacts on the operations and responsibilities of the Chamblee Police Department, DeKalb Fire Services Bureau, and regional medical facilities. Also, because the Proposed Action would not influence population growth in DeKalb County, the Master Plan Alternative would not affect service providers, the school system, or recreational resources adversely.

#### *Land Use and Planning*

The No-Action Alternative would not affect local land use. Because the Master Plan Alternative would affect future development only of the existing property and would not require additional property acquisition, it would have no impact on local zoning or land use plans. GSA and CDC have consulted with planning authorities of both the City of Chamblee and DeKalb County regarding this Proposed Action, and the current land use on the Chamblee Campus is consistent with the classification for the site in the DeKalb County Comprehensive Plan. The proposed development under the Master Plan Alternative would also be compatible with adjacent land uses, zoning districts, and future plans of the City of Chamblee and DeKalb County.

#### *Transportation*

Prior traffic studies as summarized in Chapter IV and discussed in Appendix A have indicated that the levels of service at intersections in the vicinity of Chamblee Campus would remain unchanged over the 10-year planning

period without the Proposed Action except at the intersection of Buford Highway and Chamblee-Tucker Road. The level of service at that intersection was projected to deteriorate by one category. The No-Action Alternative would not affect other means of transportation in the area; however, it also would not address existing pedestrian safety issues on Buford Highway adjacent to the campus. For the Master Plan Alternative, the traffic evaluations of this EIS in association with the prior traffic studies in the vicinity of the campus have indicated a potential for significant adverse impacts on levels of service at nearby intersections. Therefore, an updated traffic study should be performed after the two replacement buildings currently under construction (#103 and #109) are completed and occupied. The Master Plan Alternative would improve pedestrian safety on campus by separating vehicle and pedestrian routes. Also, to help mitigate problems associated with existing pedestrian traffic adjacent to the campus, consideration of a sidewalk along the entire CDC frontage on Buford Highway has been requested by the county. Additionally, the Master Plan alternative would increase the use of Marta by CDC Chamblee Campus employees due to the proximity of the Campus to the Chamblee Marta Station. This would reduce the total number of vehicle trips and be a positive impact that would result from the Master Plan alternative.

#### *Utilities and Services*

The Chamblee Campus is located within established grids of typical urban infrastructure, and all required utilities are available. Existing suppliers are meeting all current demands for utilities. Under the No-Action Alternative, future operations at the Chamblee Campus would not affect current utilities consumption rates or infrastructure capacities.

However, based on a review of the water distribution system map for the Chamblee Campus, the CDC's engineering consultant recommended the testing of fire hydrants, because the campus may not have adequate service for fire protection. The No-Action Alternative would not address this issue. For the Master Plan Alternative, CDC's design consultant would develop the projected demands on all utilities as part of the project development design phase. Because of the long lead time (10-year planning period), it is expected that all local utilities suppliers would be capable of adjusting system capacities to satisfy the demands of the facilities

included in the alternative upon completion. Because all suppliers are expected to have adequate capacity to serve the future demands resulting from the Master Plan Alternative, there would not be any significant adverse impacts on utilities. By correcting potential deficiencies in the water distribution system and other utilities on campus, the Master Plan Alternative would have a net beneficial impact on these services.

#### *Air Quality*

Air emissions at the Chamblee Campus are currently covered under a Title V permit. For the No-Action Alternative, there would be no changes in emissions that would affect the existing permit. For the Master Plan Alternative, construction equipment would generate emissions of CO, NO<sub>2</sub>, various hydrocarbons, PM-10, and small amounts of SO<sub>2</sub>; however, the impact of these additional emissions would be highly localized and limited to periods of construction. Short-term impacts would be minimal, and no long-term impacts would occur as a result of construction activities. After completion of Master Plan elements, site-generated traffic would increase and result in additional congestion on area streets. The associated pollutant emissions would have minor adverse impacts on air quality. However, the increases in air pollutant emissions would be minimal on a regional basis and would not be expected to cause any violations of NAAQS. In addition, as each development activity within the Master Plan Alternative is funded; the Title V permit is reviewed and updated.

#### *Noise*

For the Master Plan Alternative, noise levels in the nearby residential areas from construction activity on campus would fall within background sound levels and be masked by the intervening traffic noise. Potential short-term noise impacts will be reduced by maintaining construction equipment in good working condition with standard muffling apparatus installed, by limiting demolition and construction activities to daytime hours, and by complying with the noise restrictions of the Chamblee Code of Ordinances. Increased traffic noise after full Master Plan build-out would not have a significant impact on surrounding communities.

#### *Rationale for Decision:*

1. As part of environmental review completed for CDC, GSA conducted Public Scoping Meetings and consultations with the local community

to identify potential impacts and concerns that would result from proceeding with the proposed CDC Master Plan Alternative.

2. The community, through two Public Meetings and correspondence and consultation, identified no issues.

3. GSA consulted with other government agencies including local, State, and Federal Agencies, to solicit their input on the proposed Master Plan Alternative. All issues identified and responses provided are presented in the Draft and Final EIS documents.

4. GSA consulted with the State Historic Preservation Officer and received reconfirmation the proposed action would have no effect on historic properties.

5. Potential impacts that were identified during the NEPA process will be mitigated with additional NEPA documentation if necessary as individual projects are funded. CDC will institute the mitigation measures identified in the EIS and will consult with the appropriate groups and agencies at the appropriate time to insure that the identified mitigation measures are implemented.

6. Should potentially significant impacts be later identified in the future development of the Master Plan, CDC will conduct additional NEPA documentation before proceeding with the implementation of the Master Plan. In this event, CDC will supplement this EIS with additional documentation identifying the mitigation measures as required by the National Environmental Policy Act.

Therefore, having given consideration to all of the factors discovered during the 16-month environmental review process, the NEPA process is completed with the execution of this document for the CDC Proposed Action is the implementation of the Master Plan Alternative at the CDC Campus in Chamblee, Georgia, and is outlined in the Final Environmental Impact Statement Dated July 6, 2002, and this Record of Decision.

Dated: February 20, 2003.

**Philip B. Youngberg,**

*Environmental Manager, Southeast Sunbelt Region, General Services Administration.*

[FR Doc. 03-4945 Filed 3-3-03; 8:45 am]

**BILLING CODE 6820-23-M**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

**[30DAY-31-03]**

#### **Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Test of Four Intimate Partner Violence (IPV) Measurement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Intimate partner violence (IPV) is considered by many to be a serious problem that cuts across cultures, socioeconomic status and gender. The Centers for Disease Control and Prevention (CDC) considers IPV to be a "substantial public health problem for Americans that has serious consequences and costs for individuals, families, communities and society." The past 20 years have witnessed an extraordinary growth in research on the prevalence, incidence, causes and effects of IPV. Various disciplines have contributed to the development of research on the subject including psychology, epidemiology, criminology and public health.

Still, there is a lack of reliable information on the extent and prevalence of IPV. Estimates vary widely regarding the magnitude of the problem. This variance is due in large part to the different contexts, instruments, and methods that are used to measure IPV. Thus, the CDC is engaged in work to improve the quality of data, and hence knowledge, about violence against women. Part of this process includes identifying the strengths and limitations of different scales used to measure IPV and to determine the appropriateness of each of the scales for use with individuals of different racial/ethnic backgrounds.

The purpose of this project is to administer and test the statistical properties of four scales, via telephone

interviews, that measure both victimization from and perpetration of intimate partner violence (IPV). The scales will be administered to a random sample of women ages 18–50, from five racial/ethnic backgrounds: African-American, American Indian, Asian, Caucasian and Hispanic.

The four scales are: the Sexual Experiences Survey (SES), the Conflict

Tactics Scale 2 (CTS2), the Index of Spouse Abuse (ISA) and the Women's Experience with Battering (WEB) scale. The survey instrument will contain each of these scales and introductory and transitional text developed specifically for this study.

The overall benefit of this project is to increase knowledge about the reliability and validity of these scales, which have

been used in previous studies. Ultimately, this knowledge will assist the CDC in establishing an on-going data collection system for monitoring IPV. The National Center for Injury Prevention and Control (NCIPC) intends to contract with an agency to conduct the survey. The estimated annualized burden is 2,035 hours.

Data collection instrument	Number of respondents	Number of responses/ respondent	Average burden/respondent (in hours)
Pilot Test .....	50	1	42/60
Screening Interviews .....	12,000	1	3/60
IPV Measurement Scales .....	2,000	1	42/60

Dated: February 25, 2003.

**Thomas Bartenfeld,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–4982 Filed 3–3–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY–28–03]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance

Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Reader Evaluation of ATSDR Agency Profile and Annual Report—New—The Agency for Toxic Substances and Disease Registry (ATSDR) publishes an agency profile and annual report every fiscal year to highlight the agency's major activities and findings. The report provides a record of the agency's significant accomplishments in meeting its mandates under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and other federal statutes. The annual report gives a snapshot of the agency's activities for the fiscal year. It is distributed to our partners in state, Federal, and other agencies; to researchers; schools of public health; and other interested

groups. It is also available on the ATSDR Internet Web site and by request.

ATSDR staff has developed a reader survey to get readers' opinions and suggestions about the agency annual report. The survey will be inserted and mailed with each annual report. An online version of the reader survey will be available on the ATSDR Web site. The survey will collect information on the readability and effectiveness of the report, the affiliation of the readers, and any suggestions on improving readability or content.

It is anticipated that the reader survey will provide important feedback that will enable ATSDR staff to better tailor future reports to the needs of its readers. Gathering reader feedback will ensure that appropriate information is included in the document to provide a good overview of the agency's activities. The information will be used to improve customer satisfaction related to the annual report. The annualized estimated burden is 41 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hours)
Academia .....	100	1	5/60
State and Local Government Staff .....	100	1	5/60
General Public .....	300	1	5/60

Dated: February 25, 2003.

**Thomas A. Bartenfeld,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–4983 Filed 3–3–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY–29–03]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under

review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written

comments should be received within 30 days of this notice.

*Proposed Project:* National Vital Statistics Report Forms (OMB No. 0920-0213)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

#### Background

The National Vital Statistics Report Forms (0920-0213) is an approved collection of the compilation of national vital statistics. This collection dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health

Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form (CDC 64.146) are

registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. The data are routinely available in each reporting office as a by-product of ongoing activities. This form is designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence. There are no costs to respondents.

Respondents to the form: Monthly Vital Statistics Report (CDC 64.146)	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
State and Territory registration officials .....	57	12	12/60
New Mexico County officials .....	60	12	6/60

The Annual Marriage and Divorce Statistical Report Form (CDC 64.147) collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete and final counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State

or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution.

Respondents for the Annual Marriage and Divorce Statistical Report Form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. In addition, counts of marriages

will be collected from individual counties in New Mexico, and counts of divorces will be collected from individual counties in California, Colorado, Indiana, Louisiana, New Mexico, and the boroughs of New York City due to a lack of centralized complete collections in these registration areas. The data are routinely available in each reporting office as a by-product of ongoing activities. The total estimated annualized burden for this data collection is 410 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
State/Territory/City registration officials .....	56	1	30/60
County/Borough officials .....	348	1	30/60

Dated: February 25, 2003.

**Thomas A. Bartenfeld,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03-4984 Filed 3-3-03; 8:45 am]

BILLING CODE 4163-18-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

[Docket No. 02D-0303]

#### Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on Formal Dispute Resolutions; Appeals Above the Division Level

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Formal Dispute Resolutions; Appeals Above the

Division Level" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

#### FOR FURTHER INFORMATION CONTACT:

Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 16, 2002 (67 FR 63929), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control

number. OMB has now approved the information collection and has assigned OMB control number 0910-0430. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: February 26, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-4976 Filed 3-3-03; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 93D-0398]

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: "Assessment of the Effects of Antimicrobial Drug Residues From Food of Animal Origin on the Human Intestinal Flora"

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by April 3, 2003.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Guidance for Industry: "Assessment of the Effects of Antimicrobial Drug Residues From Food of Animal Origin on the Human Intestinal Flora"

In the *Federal Register* of December 27, 2001 (66 FR 66910), FDA published a 60-day notice that requested comments to the proposed collection of information. In response, the agency received two submissions containing several comments. The commenters generally supported the pathway approach outlined in the draft guidance. The comments centered on the type of information that needs to be included and the endpoints that need to be addressed. Based on suggestions contained in the comments, this final guidance will eliminate the endpoint of metabolic activity of the intestinal flora (which was proposed in the draft guidance) and will consider human data to have more weight as evidence of adverse effect on the intestinal flora, when human data is available.

Sponsors of new animal drugs must meet certain statutory requirements for

new animal drug approval under section 512 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360b). Among other things, the sponsor must demonstrate that the use of the drug is safe. Thus, when the Center for Veterinary Medicine (CVM) reviews new animal drug applications for drugs that will be used in food-producing animals, it must determine whether residues of the drug that may remain in human food derived from those animals would be harmful to humans. One possible harmful effect of residues of antimicrobial drugs that CVM considers in this determination is the possible effect of residues on human intestinal flora.

This guidance document describes the pathway approach for assessing such effects. An assessment of the safety of antimicrobial drug residues in food is a major issue that we recommend be addressed by the sponsor of a new animal drug. For residues determined to have no antimicrobial activity against representatives of the human intestinal flora, an acceptable daily intake (ADI) is recommended to be calculated based on traditional toxicological studies. The burden hours required are reported and approved under OMB control number 0910-0032. However, the guidance recommends that additional information be provided for certain drugs if an assessment of microbiological safety determines that a new animal drug produces residues in foods that are microbiologically active in the human colon. The likely respondents to this collection of information are sponsors of antimicrobial new animal drugs that will be used in food-producing animals. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Guidance	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Assessments (microbiological studies) of safety of antimicrobial drug residues that are microbiologically active in the human colon	5	1	5	14,110	70,550

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates in table 1 of this document resulted from discussions with sponsors of new animal drugs. The estimated burden includes studies, analysis of data, and writing the assessment. The number of respondents provided is based on current experience, however, the number may change in the future.

Dated: February 21, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-4977 Filed 3-3-03; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Blood Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.



**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Blood Products Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on March 13, 2003, from 8 a.m. to 6 p.m., and March 14, 2003, from 8:30 a.m. to 4 p.m.

*Location:* Hilton DC North—Gaithersburg, Grand Ballrooms A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

*Contact:* Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM-302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-3514, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting. FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood or Pearlina K. Muckelvene at 301-827-1281 at least 7 days in advance of the meeting. Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

*Agenda:* On March 13, 2003, the following committee updates are tentatively scheduled: FDA consolidation, Medical Device User Fee and Modernization Act, Clinical Laboratory Improvement Amendments waiver for human immunodeficiency, type 1 human immunodeficiency virus-1 (HIV-1) rapid tests, and the Trans Net pilot program. The committee will hear presentations, discuss, and provide recommendations on the topic of West Nile Virus testing. On March 14, 2003, the following committee updates are tentatively scheduled: Limitations on validation of anticoagulant and additive solutions to permit freezing and irradiation of red cells, and particulates in blood bags. The committee will hear presentations, discuss, and provide recommendations on the topic of extensions of the dating period for pooled platelets.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 7, 2003. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m.; and 3 p.m. and 4:30 p.m. on March 13, 2003, and between approximately 9 a.m. and 9:30 a.m.; and 10:50 a.m. and noon on March 14, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 7, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the March 13 and 14, 2003, Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-4974 Filed 3-3-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Advisory Committee for Pharmaceutical Science; Amendment of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Advisory Committee for Pharmaceutical Science. This meeting was announced in the **Federal Register** of February 3, 2003 (68 FR 5297). The amendment is being made to reflect a change in the *Agenda*

portion of the document. There are no other changes.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Reedy or LaNise Giles, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 3, 2003 (68 FR 5297), FDA announced that a meeting of the Advisory Committee for Pharmaceutical Science would be held on March 12 and 13, 2003. On page 5298, in the first column, the second sentence in the *Agenda* portion of the document is amended to read as follows:

On March 13, 2003, the committee will: (1) Discuss and provide direction for future subcommittee: Pharmacology/ Toxicology Subcommittee; (2) receive an update on the Office of Pharmaceutical Science research projects; (3) discuss and provide comments on dose content uniformity, parametric interval test for aerosol products; (4) discuss and provide comments on bioequivalence/ bioavailability of endogenous drugs; and (5) discuss and provide comments on comparability protocols.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-4975 Filed 3-3-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### Publication of OIG Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice.

**SUMMARY:** This **Federal Register** notice sets forth the recently issued OIG Special Fraud Alert addressing telemarketing by durable medical equipment (DME) suppliers. For the most part, OIG Special Fraud Alerts address national trends in health care

fraud, including potential violations of the anti-kickback statute for federal health care programs. This Special Fraud Alert specially highlights the statutory provision prohibiting DME suppliers from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, Office of Counsel to the Inspector General, (202) 619-0089.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, waste, and abuse in the department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations, and inspections. To reduce fraud and abuse in the federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

The OIG issues Special Fraud Alerts based on information it obtains concerning particular fraudulent or abusive practices within the health care industry. Special Fraud Alerts are intended for widespread dissemination to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, the OIG

has published in the **Federal Register** the texts of 11 previously-issued Special Fraud Alerts.<sup>1</sup>

This Special Fraud Alert focuses on section 1834(a)(17) of the Social Security Act, which prohibits suppliers of DME, except under limited circumstances, from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, and possible telemarketing practices by DME suppliers through the use of independent marketing firms.

**II. Special Fraud Alert: Telemarketing by Durable Medical Equipment Suppliers (January 2003)**

Section 1834(a)(17) of the Social Security Act prohibits suppliers of durable medical equipment (DME) from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, except in three specific situations: (i) the beneficiary has given written permission to the supplier to make contact by telephone; (ii) the contact is regarding a covered item the supplier has already furnished the beneficiary; or (iii) the supplier has furnished at least one covered item to the beneficiary during the preceding fifteen months. Section 1834(a)(17)(B) also specifically prohibits payment to a supplier who knowingly submits a claim generated pursuant to a prohibited telephone solicitation. Accordingly, such claims for payment are false and violators are potentially subject to criminal, civil, and administrative penalties, including exclusion from federal health care programs.

Notwithstanding the clear statutory prohibition, the Office of Inspector General has received credible information that some DME suppliers continue to use independent marketing firms to make unsolicited telephone calls to Medicare beneficiaries to market DME. Suppliers cannot do indirectly that which they are prohibited from doing directly. Except in the three specific circumstances described in the statute, section 1834(a)(17) prohibits unsolicited telemarketing by a DME supplier to Medicare beneficiaries, whether contact with a beneficiary is made by the supplier directly or by another party on the DME supplier's behalf. Moreover, a DME supplier is responsible for verifying that marketing activities performed by third parties with whom the supplier contracts or otherwise does business do not involve prohibited activity and that information purchased from such third parties was neither obtained, nor derived, from prohibited activity. If a claim for payment is submitted for items or services generated by a prohibited solicitation, both the DME supplier and the telemarketer are potentially liable for criminal, civil, and administrative penalties for causing the filing of a false claim.

**What to do if you Have Information About Fraud and Abuse Against Medicare or Medicaid Programs**

If you have information about DME suppliers or telemarketers engaging in any of the activities described above, contact any of the regional offices of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Regional offices	States served	Telephone
Boston .....	MA, VT, NH, ME, RI, CT	617-565-2664.
New York .....	NY, NJ, PR, VI	212-264-1691.
Philadelphia .....	PA, MD, DE, WV, VA, DC	215-861-4576.
Atlanta .....	GA, KY, NC, SC, FL, TN, AL	404-562-7603.
Chicago .....	IL, MN, WI, MI, IN, OH	312-353-2740.
Dallas .....	TX, NM, OK, AR, LA, MS	214-767-8406.
Kansas City .....	CO, UT, WY, MT, ND, SD, NE, KS, MO, IA	816 426-4000.
Los Angeles .....	AZ, NV, So. CA, HI,	714-246-8302.
San Francisco .....	No. CA, AK, OR, ID, WA, AK	415-437-7961.

<sup>1</sup> All OIG Special Fraud Alerts are available on the Internet at the OIG Web site at <http://oig.hhs.gov/fraud/fraudalerts.html#1>.

Dated: February 3, 2003.

Janet Rehnquist,

Inspector General.

[FR Doc. 03-5004 Filed 3-3-03; 8:45 am]

BILLING CODE 4150-01-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4820-N-05]

### Notice of Proposed Information Collection: Comment Request; Previous Participation Certification

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** May 5, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or [Wayne\\_Eddins@hud.gov](mailto:Wayne_Eddins@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708-3730 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Previous Participation Certification.

*OMB Control Number, if applicable:* 2502-0118.

*Description of the need for the information and proposed use:* This information is necessary to ensure that responsible individuals and organizations participate in HUD's multifamily housing programs. The information will be used to evaluate participants' previous participation in government programs and ensure that the past record is acceptable prior to granting approval to participate in HUD's multifamily housing programs. The collection of this information will be 100 percent automated.

*Agency form numbers, if applicable:* HUD-2530.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 4,300; the frequency of responses is 1 unless additional actions require additional submissions; estimated time to gather and enter the information into the automated system is estimated to be 30 minutes per submission, and the estimated total annual burden hours are 2,150.

*Status of the proposed information collection:* Revision of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 24, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03-4939 Filed 3-3-03; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4820-N-06]

### Notice of Proposed Information Collection: Comment Request; Funds Authorizations for Reserve for Replacements/Residual Receipts Funds

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 5, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or [Wayne\\_Eddins@hud.gov](mailto:Wayne_Eddins@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** William Hill, Director, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708-3730 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Funds Authorization for Reserve for Replacements/Residual Receipts Funds.

*OMB Control Number, if applicable:* 2502–New Collection.

*Description of the need for the information and proposed use:* This information is necessary to ensure that the Department reviews and authorizes all advances from the Reserve for Replacements and Residual Receipts funds.

*Agency form numbers, if applicable:* HUD–9250.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 8,500; the frequency of responses is 1 unless additional actions require additional submissions; estimated time to gather and enter the information into the automated system is estimated to be 30 minutes per submission, and the estimated total annual burden hours are 4,250.

*Status of the proposed information collection:* New collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 24, 2003.

**John C. Weicher,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 03–4940 Filed 3–3–03; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–02]

### Notice of Proposed Information Collection for Public Comment—Public Housing Construction Report

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* June 2, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Public Housing Construction Report.

*OMB Control Number:* 2577–0027.

*Description of the need for the information and proposed use:* Public Housing Agencies (PHAs) are responsible for contract administration for low-income housing projects. The architect, or other person licensed under State law, prepares the report and submits it to the PHA from the date of contract execution to final inspection. The report provides information on contractors, contract amount, starting/completing dates, progress on site improvements and buildings, inspection forecast and acceptance for occupancy. HUD uses the information to track the progress of construction to ensure that contract and inspection dates comply with HUD procedures.

*Agency form numbers, if applicable:* HUD–5378.

*Members of affected public:* State or Local Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 158 (projects), 12 months average construction period x two reports a month = 24 for each project totaling 3,792 responses, 15 minutes per response, 568 hours total reporting burden, 152 hours total recordkeeping burden. Total burden hours are 720.

*Status of the proposed information collection:* Extension.

**Authority:** Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 26, 2003.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

**BILLING CODE 4210–33–P**

# Public Housing Construction Report

**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing

OMB Approval No. 2577-0027 (exp. 5/31/2003)

See Instructions on Back

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect or sponsor, and you are not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937 and 24 CFR Part 941 HUD regulations. PHAs are responsible for contract administration for low-income housing projects. The architect, or other person licensed under State law, prepares the report and submits it to the PHA from the date of contract execution to final inspection. The report provides information on contractors, contract amount, starting/completing dates, progress on site improvements and buildings, inspection forecast and acceptance for occupancy. HUD uses the information to track the progress of construction to ensure that contract and inspection dates comply with HUD procedures. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Name of Public Housing Agency	Development Number	Total Number of Buildings
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Development Name	Report Number	Total Dwelling Units Scheduled
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Development Address and Telephone number of Project Office	Period Ended	Dwelling Units Scheduled Elderly
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1. Contract Data		Scheduled Completion: %		Actual Completion: %	
Prime Contractors	Division of Work	Adjusted Contract Amount	Adjusted Value of Work in Place	Contract Starting Date	Contract Completion Date
		\$	\$		
		\$	\$		
		\$	\$		
		\$	\$		
		\$	\$		
		\$	\$		
Totals		\$	\$		

## 2. Average Effective Employment During Reporting Period:

3. Dwelling Buildings Progress				4. Site Improvements Progress			
	Not Started	In Progress	Completed		Not Started	In Progress	Completed
a. Foundations				a. Utilities			
b. Mechanical Roughing				b. Streets and Walks			
c. Interior Finish				c. Lawns and Planting			
d. Punch List				d. Other			

## 5. Supervisory and Inspection Force Employed by: (1) Local Authority:

## (2) Architect:

Duty		Full Time	Part Time	Duty		Full Time	Part Time
a.				c.			
b.				d.			

## 6. Inspection Forecast

Item	No. of Units	Date to be Ready
a. Final - First Group		
b. Final - Second Group		
c. Final - Third Group		

## 7. Acceptance for Occupancy and Use

Item	No. of Units
a. Dwelling Units Previously Accepted	
b. Dwelling Units Accepted this Period	
c. Total Dwelling Units Accepted to Date	

**8. Narrative Report:** Special Circumstances, Construction Delays, Problems, etc., If Project includes Other Facilities, such as Community M and M Building. Show the Percent Completion under this heading, also include Status of Off-Site Work. Continue on back if necessary.

Contracting Officer's Name & Signature & Date:

X

Previous edition is obsolete

form HUD - 5378 (2/94)  
ref Handbooks 7417.1 & 7450.1

**8. Narrative Report:** (continued)**Instructions for Preparation of form HUD - 5378, Public Housing Construction Report**

1. General. Form HUD - 5378 shall be prepared and mailed on the 1st and 16th day of each calendar month of the construction period. Each report shall be numbered in serial order, commencing with No. 1 and continuing through the final report. All spaces must be filled on each report, including the street address of the project and the telephone number of the project office.
2. Body of Report.
  - a. Item 1: Contract Data
 

Completion Percentages: Fill in accurately the scheduled and the actual completion percentages.

Prime Contractors: Arrange Prime Contracts in the order of award.

Division of Work: Enter the division of the work awarded to each.

Adjusted Contract Amount: For each contract, enter the contract amount as adjusted by all approved Change Orders.

Adjusted Value of Work in Place: Each Contractor's latest periodical estimate for partial payment shall be utilized.

Contract Starting Date: Enter the effective starting date established by Notice to Proceed for each of the Contractors listed.

Contract Completion Date: Enter the contract completion date established by Notice to Proceed for each of the Contractors listed.
  - b. Item 2: Average Effective Employment During Reporting Period: This is intended to show the approximate size of the productive labor force.
  - c. Item 3: Dwelling Building Progress: Enter the number of dwelling buildings under each appropriate heading.
  - d. Item 4: Site Improvements Progress: This covers all on-site non-dwelling construction. Enter an "X" under each appropriate heading. If "In Progress," show the percentage of completion.
  - e. Item 5: Supervisory and Inspection Force: This should show the current composition of these forces and by whom they are employed.
 

Employment: Indicate with an "X" by whom these forces are employed.

Duty: Enter the active duty assignments for the period. Do not use individual's names.

Time Classification: Enter the number of persons performing the duty under each time classification.
  - f. Item 6: Inspection Forecast: This forecast is to provide HUD with advance information for planning itineraries of Construction Representatives and should be revised in successive reports as necessary.
  - g. Item 7: Acceptance of Occupancy and Use: These items are self-explanatory.
  - h. Item 8: Narrative Report: The report should be the historical record of the construction of the project, written in conversational style, and should include the names and titles of all official visitors, including the Architects.
3. Signatures: The original and all copies must be signed and dated by the Contracting Officer, with the name typed below the signature.

[FR Doc. 03-4942 Filed 3-3-03; 8:45 am]

BILLING CODE 4210-33-C

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4815-N-09]

**Notice of Submission of Proposed Information Collection to OMB: Multifamily Project Applications and Review of Applications—Lender Processing****AGENCY:** Office of the Chief Information Officer, HUD.**ACTION:** Notice.**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.**DATES:** *Comments Due Date:* April 3, 2003.**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502-0331) and should be sent to: Lauren Wittenberg,OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; E-mail [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).**FOR FURTHER INFORMATION CONTACT:**Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Multifamily Project Applications and Review of Applications—Lender Processing.*OMB Approval Number:* 2502-0331.*Form Numbers:* HUD-92264, 9664A, 92664T, 92273, 92274, 92326, 92329, 92331, and 92485.*Description of the Need for the Information and Its Proposed Use:* The Multifamily Accelerated Processing (MAP) lender submits information to HUD for multifamily properties needing FHA insurance. Lender's underwriters involved are architects, costs analysts, appraisers, and mortgage credit analysis.*Respondents:* Business or other for-profit.*Frequency of Submission:* On occasion.*Reporting Burden:*

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
230 .....		10.5		25		60,605

*Total Estimated Burden Hours:* 60,605.*Status:* Reinstatement, with change.**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 25, 2003.

**Wayne Eddins,***Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 03-4943 Filed 3-3-03; 8:45 am]

BILLING CODE 4210-72-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4815-N-10]

**Notice of Submission of Proposed Information Collection to OMB: Insurance for Home Equity Conversion Mortgages (HECM), Residential Loan Application for Reverse Mortgage****AGENCY:** Office of the Chief Information Officer, HUD.**ACTION:** Notice.**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.**DATES:** *Comments Due Date:* April 3, 2003.**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502-0524) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; E-mail [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports ManagementOfficer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total

number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Insurance for Home Equity Conversion Mortgages (HECM), Residential Loan Application for Reverse Mortgage.

*OMB Approval Number:* 2502-0524.

*Form Numbers:* HUD-92900-A, HUD-92900-B, Fannie Mae Form 1003, Fannie Mae Form 1009None.

*Description of the Need for the Information and its Proposed Use:*

Lenders will use this streamlined application to gather borrower data to determine eligibility for the HECM Program. The Department will gather the data for reports to Congress regarding the Program.

*Respondents:* Individuals or households, Business or other for-profit.

*Frequency of Submission:* On occasion, Annually.

*Reporting Burden:*

Number of respondents	Annual response	×	Hours per response	=	Burden hours
5,000 .....	1		1		5,000

*Total Estimated Burden Hours:* 5,000.  
*Status:* Reinstatement, without change, of previously approved.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 25, 2003.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 03-4944 Filed 3-3-03; 8:45 am]

**BILLING CODE 4210-72-P**

## DEPARTMENT OF THE INTERIOR,

### Office of the Secretary

#### Delaware & Lehigh National Heritage Corridor Commission Meeting

**AGENCY:** Department of the Interior, Office of the Secretary.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463).

*Meeting Date and Time:* Friday, March 14, 2003, Time 1:30 p.m. to 4 p.m.

**ADDRESSES:** Market Towns Office, Slatington Borough Hall, 125 South Walnut Street, Slatington PA 18080.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and national resources. The Commission reports to the Secretary of the Interior and to Congress.

**SUPPLEMENTARY INFORMATION:** The Delaware & Lehigh National Heritage

Corridor Commission was established by Public Law 100-692, November 18, 1988, and extended through Public Law 105-355, November 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** C. Allen Sanchse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042 (610) 923-3548.

Dated: February 25, 2003.

**C. Allen Sachse,**

*Executive Director, Delaware & Lehigh National Heritage Corridor Commission.*

[FR Doc. 03-4985 Filed 3-3-03; 8:45 am]

**BILLING CODE 6820-PE-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Receipt of Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.  
**DATES:** Comments on these permit applications must be received on or before April 3, 2003, to receive our consideration.

**ADDRESSES:** Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (fax: 503-231-6243). Please refer to the respective permit number for

each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

#### FOR FURTHER INFORMATION CONTACT:

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503-231-2063). Please refer to the respective permit number for each application when requesting copies of documents.

#### SUPPLEMENTARY INFORMATION:

##### Permit No. TE-065377

*Applicant:* San Andreas Land Conservancy, Santa Cruz, California. The applicant requests a permit to take (harass, capture, translocate, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with bullfrog eradication efforts in Alameda, San Mateo, and Santa Clara Counties, California for the purpose of enhancing its survival.

##### Permit No. TE-048470

*Applicant:* Sonoma County, Santa Rosa, California. The permittee requests an amendment to take (harass by survey, capture, and release) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

##### Permit No. TE-832262

*Applicant:* Department of Parks and Recreation, San Luis Obispo, California.



The permittee requests an amendment to take (harass by survey) the Morro shoulderband (= banded dune) snail (*Helminthoglypta walkeriana*) in conjunction with presence or absence surveys and ecological research throughout the species range in California for the purpose of enhancing its survival.

**Permit No. TE-066621**

*Applicant:* Martin Ruane, Ventura, California.

The applicant request a permit to take (locate nests and harass by survey) the California least tern (*Sterna antillarum browni*) in conjunction with monitoring activities in Ventura County, California for the purpose of enhancing its survival.

**Permit No. TE-020557**

*Applicant:* Malik Tamimi, San Diego, California.

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

**Permit No. TE-837307**

*Applicant:* Holly Cheong, San Diego, California.

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

**Permit No. TE-799568**

*Applicant:* Dana Kamada, San Clemente, California.

The permittee requests an amendment to take (capture, handle, and band) the least Bell's vireo (*Vireo bellii pusillus*), and to take (harass by survey, monitor nests, capture, handle, and band) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

**Permit No. TE-056557**

*Applicant:* Bureau of Reclamation, Burley, Idaho.

The applicant request a permit to take (capture, collect, and sacrifice) the Utah valvata snail (*Valvata utahensis*) in conjunction with demographic,

hydrologic, and genetic research throughout the range of the species for the purpose of enhancing its survival.

**Permit No. TE-047805**

*Applicant:* National Audubon Society, Honolulu, Hawaii.

The permittee requests an amendment to take (capture) short-tailed albatross (*Phoebastria nigripes*) in conjunction with research on various fishing methods, including underwater chutes, side-setting, and blue-dyed squid bait, aimed at reducing capture of the short-tailed albatross on Hawaiian tuna longline vessels in Federal waters off the State of Hawaii for the purpose of enhancing its survival.

**Permit No. TE-067064**

*Applicant:* Lindsay Messett, Lakewood, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

**Permit No. TE-067159**

*Applicant:* Kristen Reifel, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: February 3, 2003.

**Rowan W. Gould,**

*Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 03-4986 Filed 3-3-03; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Receipt of Application for Endangered Species Permit: Permits for Scientific Purposes, Enhancement of Propagation or Survival (i.e., Recovery Permits), and Interstate Commerce Permits**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application for endangered species permit.

**SUMMARY:** The following applicants have applied for permits to conduct certain

activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**DATES:** Written data or comments on these applications must be received, at the address given below, by April 3, 2003.

**ADDRESSES:** U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679-4176; Facsimile: 404/679-7081.

**FOR FURTHER INFORMATION CONTACT:** Victoria Davis, Telephone: 404/679-4176; Facsimile: 404/679-7081.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see ADDRESSES*). You may also comment via the Internet to [victoria\\_davis@fws.gov](mailto:victoria_davis@fws.gov). Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (*see FOR FURTHER INFORMATION*). Finally, you may hand deliver comments to the Service office listed below (*see ADDRESSES*). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for

a copy of such documents to the following office within 30 days of the date of publication of this notice:

*Applicant:* Assistant Regional Director, Ecological Services, Fish and Wildlife Service, Southeast Region, Atlanta, Georgia, TE697819-2.

The applicant requests renewal of the existing authorization to take, or remove and reduce to possession, all wildlife and plant species listed as threatened or endangered in 50 CFR parts 17.11 and 17.12, from throughout these species' ranges in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Arkansas, Louisiana, Puerto Rico, and the U.S. Virgin Islands. Activities authorized under this permit are for the purpose of enhancement of survival of the species which include but are not limited to collection of seeds, leaves, stems, and rhizomes; capture, release, and tracking using radio telemetry; and habitat disturbance while conducting population surveys and recovery activities.

*Applicant:* National Park Service-Buffalo National River, Superintendent Ivan D. Miller, Harrison, Arkansas, TE065726-0.

The applicant requests authorization to take (survey, capture, and release) the following endangered bats: Ozark big-eared bat (*Corynorhinus townsendii ingens*), gray bat (*Myotis grisescens*), and Indiana bat (*Myotis sodalis*) while conducting presence/absence surveys in caves and abandoned mines. The proposed activities will take place in the Buffalo National River; Marion, Searcy, Baxter, and Newton Counties, Arkansas.

*Applicant:* John M. Alderman, Aquatic Endangered Species Biologist, Pittsboro, North Carolina, TE065756-0.

The applicant requests authorization to take (survey, capture, release, and collect relict shells) the following species: Tar River spiny mussel (*Elliptio steinstansana*), James spiny mussel (*Pleurobema collina*), dwarf wedgemussel (*Alasmidonta heterodon*), Appalachian elktoe (*Alasmidonta raveneliana*), littlewing pearly mussel (*Pegias fabula*), Waccamaw silverside (*Menidia extensa*), Cape Fear shiner (*Notropis mekistocholas*), and spotfin chub (*Cyprinella monacha*). Take may occur while conducting presence/absence or catch-per-unit-effort surveys. The proposed activities will take place in all river basins in North Carolina and South Carolina.

*Applicant:* Mississippi Department of Environmental Quality, Phil Bass, Pearl, Mississippi TE065948-0.

The applicant requests authorization to take (survey, capture, release, and collect relict shells) the following

species: Cumberland combshell (*Epioblasma brevidens*), southern combshell (*Pleurobema decisum*), oranogenacre mucket (*Lampsilis perovalis*), black clubshell (*Pleuroblema curtum*), southern clubshell (*Pleuroblema decisum*), flat pigtoe (*Pleuroblema marshalli*), ovate clubshell (*Pleuroblema perovatum*), heavy pigtoe (*Pleuroblema taitianum*), inflated heelsplitter (*Potamilum inflatus*), Stirrupshell (*Quadrula stapes*), gulf sturgeon (*Acipenser oxyrinchus desotoi*), and bayou darter (*Etheostoma rubrum*). Take may occur while conducting biological assessment activities. All species recognized as threatened or endangered will be released immediately. The proposed activities will take place throughout the state of Mississippi.

*Applicant:* Environmental Resource Analysts, Inc., Joseph Freda, Auburn, Alabama TE065979-0.

The applicant requests authorization to take (survey, capture, measure, release, and collect relict shells) the following species: eastern indigo snake (*Drymarchon couperi*), purple bankclimber mussel (*Elliptioideus sloatianus*), shiny-rayed pocketbook mussel (*Lampsilis subangulata*), gulf moccasinshell mussel (*Medionidus penicillatus*), and oval pigtoe mussel (*Pleurobema pyriforme*). Take may occur while conducting presence/absence surveys in Clay County, Georgia. All species recognized as threatened or endangered will be released immediately. The proposed aquatic activities will take place in small creeks of the Chattahoochee River, including Drag Nasty Creek, Pataula Creek, Crooked Creek, Sany Branch, and Sandy Creek. Gopher tortoise burrows within the project area will be surveyed to determine the presence of the eastern indigo snake.

*Applicant:* U.S. Forest Service, Ozark-Saint Francis National Forests, Forest Supervisor, Russellville, Arkansas TE065972-0.

The applicant requests authorization to take (survey, monitor, capture, measure, release, and collect relict shells) the following species: gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), bald eagle (*Haliaeetus leucocephalus*), interior least tern (*Sterna antillarum*), fat pocketbook (*Potamilus capax*), scaleshell (*Leptodea leptodon*), pink mucket (*Lampsilis abrupta*), pallid sturgeon (*Scaphirhynchus albus*), cave crayfish (*Cambarus aculabrum*), cave crayfish (*Cambarus zophonastes*), Magazine Mountain shagreen (*Inflectarius magazinensis*), American

burying beetle (*Nicrophorus americanus*), American alligator (*Alligator mississippiensis*), *Geocarpon minimum* (*Geocarpon*), and *Lesquerella filiformis* (Missouri bladderpod). Take may occur while conducting presence/absence surveys and during monitoring and management of the populations. The proposed activities will take place on the Ozark-Saint Francis National Forest; Baxter, Benton, Conway, Crawford, Franklin, Johnson, Lee, Logan, Madison, Newton, Phillips, Searcy, Stone, Van Buren, Washington, and Yell Counties, Arkansas.

Dated: February 21, 2003.

**Sam D. Hamilton,**  
Regional Director.

[FR Doc. 03-4987 Filed 3-3-03; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Receipt of Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

**DATES:** Comments on these permit applications must be received on or before April 3, 2003 to receive our consideration.

**ADDRESSES:** Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (fax: 503-231-6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for

a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503-231-2063). Please refer to the respective permit number for each application when requesting copies of documents.

#### SUPPLEMENTARY INFORMATION:

##### Permit No. TE-812206

*Applicant:* Robin Church, Spring Valley, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

##### Permit No. TE-067347

*Applicant:* Crysta Dickson, Rancho Santa Marguerita, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

##### Permit No. TE-813545

*Applicant:* Brock Ortega, Poway, California.

The permittee requests an amendment to take (harass by survey and translocate) the arroyo toad (*Bufo microscaphus californicus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

##### Permit No. TE-067786

*Applicant:* John W. Martin, Sacramento, California.

The applicant requests a permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*), and take (capture, mark, and release) the salt mouse harvest mouse (*Reithrodontomys raviventris*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

##### Permit No. TE-067351

*Applicant:* Cynthia Hopkins, El Cerrito, California.

The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California

for the purpose of enhancing their survival.

##### Permit No. TE-027427

*Applicant:* The Wildlife Project, Modesto, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

##### Permit No. TE-027736

*Applicant:* Erik LaCoste, Ramona, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

##### Permit No. TE-063608

*Applicant:* Brian Lohstroh, San Diego, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

##### Permit No. TE-063230

*Applicant:* Jim Rocks, San Diego, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in

California for the purpose of enhancing their survival.

##### Permit No. TE-807078

*Applicant:* Point Reyes Bird Observatory, Stinson Beach, California.

The permittee requests an amendment to take (locate and monitor nests, capture, and band) the California least tern (*Sterna antillarum brownii*) in conjunction with monitoring activities in San Luis Obispo and Santa Barbara Counties, California for the purpose of enhancing its survival.

##### Permit No. TE-832262

*Applicant:* The California Department of Parks and Recreation, San Luis Obispo, California.

The permittee requests an amendment to take (collect and sacrifice) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with genetic research throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: February 14, 2003.

**Rowan W. Gould,**

*Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 03-4988 Filed 3-3-03; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-040-1610-DS]

#### Notice of Availability of the Draft Environmental Impact Statement for the Snake River Resource Management Plan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of the Draft Environmental Impact Statement (EIS) for the Snake River Resource Management Plan (RMP), Teton County, Wyoming.

**SUMMARY:** In accordance with Section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Draft RMP/EIS for the Snake River planning area. This planning effort addresses the BLM-administered public lands and mineral estate in the vicinity of the Snake River and the Town of Jackson, Teton County, Wyoming. When completed, the RMP will provide general management direction for BLM-administered public lands and mineral estate and their uses in the planning

area. The planning area contains approximately 1,073 acres of BLM surface/mineral estate and 15,123 acres of Federal mineral estate under private surface lands. The BLM administers these lands through its Pinedale Field Office, Pinedale, Wyoming, 80 miles south of Jackson. The Draft EIS analyzes six alternatives, ranging from continuing current management (No Action) to disposing of the BLM-administered public surface lands.

When approved, the RMP will contain land and resource management decisions that were deferred from consideration under the Pinedale RMP (EIS/Record of Decision 1988). Because the ownership status of these tracts of land was in question during the planning processes for Pinedale RMP, the BLM decided that a separate RMP would be prepared for these tracts at a later date.

**DATES:** Written comments on the Draft EIS for the Snake River RMP will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability of the Draft EIS in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, or mailings.

**ADDRESSES:** Written comments should be sent or hand-delivered to: Snake River RMP Team Leader, Bureau of Land Management, Pinedale Field Office, 432 South Mill Street, P.O. Box 768, Pinedale, Wyoming 82941. Comments submitted by electronic mail should be sent to: [pinedale\\_wymail@blm.gov](mailto:pinedale_wymail@blm.gov). Please submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include "Attn: Snake River RMP" and your name and return address in the text of the message. If you do not receive a confirmation of receipt message notifying you that the BLM has received your electronic comments within 72 hours of electronic mailing, please contact the Pinedale Field Office directly by telephone at (307) 367-5300.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

available for public inspection in their entirety.

Copies of the Draft EIS for the Snake River RMP are available in the Pinedale Field Office at the above address, and at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Anyone wishing to be placed on the mailing list for the Snake River planning effort should contact the Pinedale Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Priscilla Mecham, Field Manager, or Kellie Roadifer, Snake River RMP Team Leader, Pinedale Field Office, Bureau of Land Management, at the above address, or at (307) 367-5300.

**SUPPLEMENTARY INFORMATION:** The BLM-administered public lands and mineral estate in the planning area currently do not have an approved land use plan. In December 1999, the BLM issued a Notice of Intent to prepare a land use plan for those lands and mineral estate under its jurisdiction. Upon approval, the Snake River RMP would establish management direction for the surface and mineral estates and associated resources under BLM administration near Jackson, Wyoming.

The BLM has conducted the Snake River RMP process under Federal regulations established to meet the provisions of the Federal Land Policy Management Act and National Environmental Policy Act, at 43 Code of Federal Regulations (CFR) 1600 and 40 CFR 1500-1508, respectively.

Public participation has been sought through scoping, public meetings, and surveys to ensure that this planning effort addresses all issues and concerns from those interested in the management of the public lands within the Snake River planning area.

Based on issues and concerns raised by the public during scoping and public participation activities the BLM has developed six alternative plans for managing the 23 parcels (1,073 acres) of public land and resources in the Snake River valley. The BLM's preferred alternative proposes disposal or transfer of ownership of administrative responsibilities for 23 parcels (1,073 acres) of BLM-administered public lands to other Federal, State, or local government agencies. The preferred alternative also considers disposal of the parcels to a private entity or entities with land conservation or open-space preservation interests. All mineral estate would be retained in federal ownership. Sand and gravel mining would be allowed under certain circumstances. The lands would be closed to all other mineral activity. The remaining

alternatives range from continuation of current management (No Action) to varying combinations of preservation, protection, and development of the BLM-administered lands and resources in the planning area.

During the Snake River planning process the BLM identified issues associated with land use and resource management that guided development of the six alternatives. These key issues include:

**1. Cooperative Management**

The BLM-administered public lands along the Snake River are interspersed among tracts of private and State lands. With the exception of three parcels, all of the BLM-administered parcels are surrounded or "landlocked" by lands in private ownership. Private and State lands in the planning area are similarly bounded by Federal lands administered by the following agencies: National Park Service—Grand Teton National Park; U.S. Fish and Wildlife Service—National Elk Refuge; and U.S. Department of Agriculture Forest Service—Bridger-Teton National Forest. In addition, the U.S. Army Corps of Engineers administers the Snake River channel and facilities associated with flood control. Opportunities for cooperative management of surface uses by various Federal and State agencies include access to private and commercial river-based recreation, land ownership adjustment, development and maintenance of additional trail-based recreation activities, and such activities as scientific study and information sharing.

**2. Recreation Opportunities**

BLM-administered public lands along the Snake River are generally accessible to the public for recreation activities. Private recreation use is primarily by Teton County residents, especially those from the communities of Jackson and Wilson. There is also substantial commercially outfitted river floating, with visitors from throughout the United States and from foreign countries. The primary recreation activities are hiking, walking, horseback riding, cross-country skiing, picnicking, watching wildlife, and river-based recreation, such as fishing and boating. At present, no recreation use fees are collected by the BLM. Recreation use, particularly commercially outfitted floating, is increasing. This results in increased crowding, introduction of noxious weeds, and degradation of riparian vegetation. Questions addressed in the Snake River RMP involve how best to accommodate the

demand for recreation use of BLM-administered public lands.

### 3. Availability and Development of Mineral Materials for Construction

At present, there is a small, localized sand and gravel mining industry within the planning area. These mineral materials are needed primarily for maintenance of the flood control levees along the Snake River, and for road and building construction and maintenance around the Jackson Hole area. These mineral materials are not readily available from other Federal, State, or local government lands, nor are they readily available from private lands. Sand and gravel are often trucked in from outside the Jackson Hole area at a higher cost to users. Questions addressed in the Snake River RMP include whether sand and gravel mining from BLM-administered public lands would be appropriate, and what conditions would be necessary to protect recreation opportunities, watershed resources and important wildlife habitat.

### 4. Land Surface Ownership Adjustment

Because of the small acreage and irregular shape of each of the 23 BLM-administered parcels under consideration, their scattered nature, and their proximity to private real estate of high value, BLM is considering disposal or transfer of public ownership or administration of these parcels. Questions addressed in the Snake River RMP include whether the parcels should be retained in Federal ownership, how these lands should be administered, who should administer the lands, and under what criteria would the parcels be evaluated and deemed suitable for disposal, if appropriate administration could not be established.

The Snake River RMP Draft EIS alternative plans were developed in conformance with the BLM's National Fire Plan and the National Energy Policy (May 2001). The potential in the Snake River RMP planning area for development of energy resources such as oil and gas, coal, geothermal, and wind resources has been determined to be very low.

Dated: November 27, 2002.

**Robert P. Henry,**

*Acting Associate State Director.*

[FR Doc. 03-5165 Filed 3-3-03; 12:50 pm]

**BILLING CODE 4310-22-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-910-0777-26-241A]

#### State of Arizona Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Arizona Resource Advisory Council meeting notice.

**SUMMARY:** This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on March 25, 2003, at Cochise College, 1025 State Route 90 in Benson, Arizona. It will begin at 9:30 a.m. and conclude at 5 p.m. The agenda items to be covered include: Review of the January 27, 2003, meeting minutes; BLM State Director's Update on Statewide Issues; Arizona Statewide Fire Plan Amendment and Planning Updates, BLM Safford's Grazing Monitoring Program, Off-Highway Vehicle "Decision Tree" Concept, status of the San Pedro Grazing Moratorium, RAC Questions on Written Reports from BLM Field Office Managers; Update Proposed Field Office Rangeland Resource Teams, Reports by the Standards and Guidances, Recreation, Public Relations, Land Use Planning, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 25, for any interested publics who wish to address the Council.

#### FOR FURTHER INFORMATION CONTACT:

Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004-2203, (602) 417-9215.

**Michael Taylor,**

*Acting Arizona State Director.*

[FR Doc. 03-4961 Filed 3-3-03; 8:45 am]

**BILLING CODE 4310-32-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-130-1020-PF; GP3-0098]

#### Notice of Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory

Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held March 25, 2003, in the conference room of the Spokane District BLM Office, beginning at 9 a.m. The public comment period will begin at approximately 10 a.m. to 10:30 a.m. and the meeting will adjourn at approximately 4 p.m.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Eastern Washington. At this meeting, topics we plan to discuss include:

- Interior Columbia Basin Ecosystem Management Project Status.
- Briefing by Resource Advisory Council Chair on meeting with BLM Director.
- Agenda for Future Resource Advisory Council Meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

#### FOR FURTHER INFORMATION CONTACT:

Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536-1200.

Dated: February 26, 2003.

**Joseph K. Buesing,**

*District Manager.*

[FR Doc. 03-4989 Filed 3-3-03; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-020-1010-AC]

#### Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held April 11, 2003, in Miles City, MT beginning at 8 a.m. When determined, the meeting place will be announced in a news release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, telephone (406) 233-2831.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include: OHV update; National RAC meeting; Weatherman Draw Subcommittee update; Oil and gas EIS update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 25, 2003.

**David McIlroy,**

*Field Manager.*

[FR Doc. 03-5053 Filed 3-3-03; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-958-1430-EU; HAG-03-0018; OR 57458]

### Notice of Disclaimer of Interest; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Dennis D. Ashenfelter, has filed an application on behalf of Progress Quarry, L.L.C., for a record disclaimer of interest from the United States pursuant to the authority of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), for the following described land:

Willamette Meridian, Oregon

T. 2 S., R. 1 W.,

Sec. 5, S $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$

The area described contains 240.00 acres in Washington County, Oregon.

### FOR FURTHER INFORMATION CONTACT:

Jenny Liang, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-808-6299.

**SUPPLEMENTARY INFORMATION:** The above described land was granted by the United States to the Oregon and California Rail Road Company by patent No. 1, dated May 9, 1871, pursuant to the Act of July 25, 1866, and June 25, 1868. The patent contained the statement excluding and accepting from the transfer, all mineral lands should any such be found to exist, but this exception and exclusion according to the terms of the statute shall not be construed to include coal and iron lands. The Bureau of Land Management (BLM) will determine if the United States has any claim to the minerals in the land described above; whereby, issuance of the proposed recordable disclaimer of interest would remove a cloud on the title to the land. For a period of 90 days from the date of publication of this notice, all persons who wish to present comments, suggestions, or objections in connection with the proposed disclaimer may do so by writing to the Chief, Branch of Realty and Records Services, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208. If no objections are received, the disclaimer will be published shortly after the 90 days has lapsed.

**Robert D. DeViney, Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 03-5006 Filed 3-3-03; 8:45 am]

**BILLING CODE 4310-33-P**

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-03-006]

### Sunshine Act Meeting

**AGENCY:** United States International Trade Commission.

**TIME AND DATE:** March 11, 2003 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-355 and 731-TA-659-660 (Review) (Remand) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the U.S. Court of International Trade on or before March 24, 2003).

5. Outstanding action jackets: none. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 27, 2003.

By order of the Commission:

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-5182 Filed 2-28-03; 2:08 pm]

**BILLING CODE 7020-02-P**

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-03-007]

### Sunshine Act Meeting

**AGENCY:** United States International Trade Commission.

**TIME AND DATE:** March 12, 2003 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-990 (Final) (Non-Malleable Cast Iron Pipe Fittings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 24, 2003).

5. Inv. Nos. 701-TA-319 and 322 and 731-TA-573 and 578 (Review) (Remand) (Certain Carbon Steel Products (Cut-to-Length Plate) from Belgium and Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the U.S. Court of International Trade on or before March 28, 2003.)

6. Outstanding action jackets: none.  
In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 27, 2003.

By order of the Commission:

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-5183 Filed 2-28-03; 2:08 pm]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day Emergency Notice of Information Collection Under Review: New Bioterrorism Preparedness Act: Entity/Individual Information.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 9, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395-6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to David M. Hardy, Records/Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Ave. NW., Washington, DC 20535, or call (202) 324-3625.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Bioterrorism Preparedness Act: Entity/Individual Information.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: FD-961 (2-24-03), Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. Other: Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is designed to prevent bioterrorism and other public health emergencies. The law requires entities and persons possessing agents or toxins deemed to be a severe threat to human, animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture or Secretary of Health and Human Resources. Under the Act the Attorney General has the responsibility to determine whether any individual is a restricted person, as that term is defined in 18 U.S.C. 175b(d) or is reasonably suspected by any Federal law enforcement or intelligence agency of committing a Federal crime of terrorism, or having knowing involvement with an organization that engages in domestic or international terrorism, or with any other organization that engages in intentional crimes of violence; or an agent of a foreign power. The Attorney General delegated this responsibility to the Federal Bureau of Investigation (FBI). The collection of this information is necessary for the FBI to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond/reply. It is estimated 20,000 entities/individuals will complete the information in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 10,000 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: February 26, 2003.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 03-4959 Filed 3-3-03; 8:45 am]

**BILLING CODE 4410-02-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693-4129 or e-mail: [King-Darrin@dol.gov](mailto:King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

\* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

\* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;



\* Enhance the quality, utility, and clarity of the information to be collected; and

\* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Mine Safety and Health Administration (MSHA).

*Type of Review:* Extension of a currently approved collection.

*Title:* Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.

*OMB Number:* 1219-0119.

*Frequency:* On Occasion.

*Affected Public:* Business or other for-profit.

*Type of Public:* Recordkeeping and Reporting.

*Number of Respondents:* 114.

*Annual Responses:* 101,944.

*Estimated Time Per Respondent:* 0.57 hours (34 minutes).

*Total Burden Hours:* 58,265.

*Total Annualized Capital/Startup Costs:* \$60,492.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$316,140.

*Description:* 30 CFR parts 7, 36, 70, and 75 mandate safety requirements in three major areas of concern: diesel engine design and testing requirements; safety standards for the maintenance and use of equipment; and exhaust gas. The information collection requirements in these provisions are necessary to protect the health and safety of miners.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. 03-5049 Filed 3-3-03; 8:45 am]

**BILLING CODE 4510-23-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 24, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by

calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693-4129 or e-mail [King-Darrin@dol.gov](mailto:King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

\* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

\* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

\* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employee Benefits Security Administration (EBSA).

*Title:* National Medical Support Notice—Part B.

*OMB Number:* 1210-0113.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; and Individuals or households.

*Frequency:* On occasion.

*Type of Response:* Third party disclosure.

*Number of Respondents:* 156,000.

*Number of Annual Responses:* 800,000.

*Estimated Time Per Response:* 1 hour and 47 minutes for small plans (fewer than 10 participants) and 37 minutes for plans with more than 10 participants.

*Total Burden Hours:* 530,614.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$1,216,000.

*Description:* Section 609 of ERISA and 29 CFR 2590.609-2 establish a National Medical Support Notice, Part B of which is used to implement coverage of children under ERISA covered group

health plans pursuant to "Qualified Medical Child Support Orders."

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. 03-5050 Filed 3-3-03; 8:45 am]

**BILLING CODE 4510-23-M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. NRTL3-92]

#### TUV Rheinland of North America, Inc.; Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of TUV Rheinland of North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

**DATES:** You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

*Regular mail and express delivery service:* Your comments must be postmarked by March 19, 2003.

*Hand delivery and messenger service:* Your comments must be received in the OSHA Docket Office by March 19, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

*Facsimile and electronic transmission:* Your comments must be sent by March 19, 2003.

**ADDRESSES:** *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL3-92, Room N-2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693-2350 for information about security procedures concerning the



delivery of materials by express delivery, hand delivery and messenger service.

**Facsimile:** If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693-1648. You must include the docket number of this notice, Docket NRTL3-92, in your comments.

**Internet access to comments and submissions:** OSHA will place comments and submissions in response to this notice on the OSHA Webpage <http://www.osha.gov>. Accordingly, OSHA cautions you about submitting information of a personal nature (e.g., social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202) 693-2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

**Extension of Comment Period:** Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210, or fax to (202) 693-1644.

**FOR FURTHER INFORMATION CONTACT:** Sherry Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693-2110.

#### **SUPPLEMENTARY INFORMATION:**

##### **Notice of Application**

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North America, Inc. (TUV), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV's expansion request covers the use of additional test standards. OSHA's current scope of recognition for TUV may be found in the following informational web page: <http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform *independent* safety testing

and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL.

The Agency processes applications for initial recognition or for expansion or renewal of this recognition following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at <http://www.osha-slc.gov/dts/otpca/nrtl/index.html>.

The most recent notice published by OSHA for TUV's recognition covered a renewal of recognition, which became effective on March 18, 2002 (67 FR 12051).

The current address of the testing facility (site) that OSHA recognizes for TUV is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

#### **General Background on the Application**

TUV has submitted a request, dated October 16, 2001 (see Exhibit 28), to expand its recognition to use 132 additional test standards. The NRTL Program staff has determined that 17 of the 132 standards cannot be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL. Therefore, OSHA would include 115 standards in the expansion, as listed below. OSHA performed an on-site review of the NRTL in June 2002 and recommended the expansion in a memo dated October 17, 2002 (see Exhibit 29).

The NRTL Program staff found that a few of the standards requested by TUV have been withdrawn or replaced by the standards developing organization. Under OSHA policy, we can no longer recognize the NRTL for such test standards but the NRTL may request or OSHA can provide recognition for comparable test standards, *i.e.*, other appropriate test standards covering similar types of product testing. The appropriate deletions and substitutions are reflected in the listing below.

ANSI A17.5 Elevators and Escalator Electrical Equipment  
ANSI A90.1 Safety Standard for Belt Manlifts  
ANSI C12.1 Code for Electricity Meters  
ANSI C37.21 Control Switchboards  
ANSI Z8.1 Commercial Laundry and Dry-cleaning Equipment and Operations  
ANSI/NFPA 72 Installation, Maintenance, and Use of Protective Signaling Systems  
UL 44 Rubber-Insulated Wires and Cables  
Thermoset-Insulated Wires and Cables  
UL 45 Portable Electric Tools  
UL 50 Enclosures for Electrical Equipment  
UL 62 Flexible Cord and Fixture Wire  
UL 65 Wired Cabinets  
UL 69 Electric-Fence Controllers  
UL 83 Thermoplastic-Insulated Wires and Cables  
UL 150 Antenna Rotators  
UL 187 X-Ray Equipment  
UL 201 Garage Equipment  
UL 224 Extruded Insulating Tubing  
UL 231 Power Outlets  
UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles  
UL 244A Solid-State Controls for Appliances  
UL 291 Automated Teller Systems  
UL 294 Access Control System Units  
UL 325 Door, Drapery, Gate, Louver, and Window Operators and Systems  
UL 347 High-Voltage Industrial Control Equipment  
UL 416 Refrigerated Medical Equipment  
UL 427 Refrigerating Units  
UL 429 Electrically Operated Valves  
UL 444 Communications Cables  
UL 466 Electric Scales  
UL 467 Electrical Grounding and Bonding Equipment  
UL 484 Room Air Conditioners  
UL 496 Edison Base Lampholders  
UL 498 Attachment Plugs and Receptacles  
UL 508A Industrial Control Panels  
UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps  
UL 551 Transformer-Type Arc-Welding Machines  
UL 563 Ice Makers  
UL 574 Electric Oil Heaters  
UL 588 Christmas-Tree and Decorative-Lighting Outfits  
UL 603 Power Supplies for Use with Burglar-Alarm Systems  
UL 606 Linings and Screens for Use with Burglar-Alarm Systems  
UL 609 Local Burglar-Alarm Units and Systems  
UL 632 Electrically Actuated Transmitters  
UL 634 Connectors and Switches for Use with Burglar-Alarm Systems  
UL 636 Holdup Alarm Units and Systems  
UL 639 Intrusion-Detection Units  
UL 664 Commercial Dry-Cleaning Machines (Type IV)  
UL 676 Underwater Lighting Fixtures  
UL 681 Installation and Classification of Burglar and Holdup Alarm Systems  
UL 756 Coin and Currency Changers and Actuators  
UL 773 Plug-In Locking-Type Photocontrols for Use With Area Lighting  
UL 773A Nonindustrial Photoelectric Switches for Lighting Control  
UL 813 Commercial Audio Equipment

UL 817 Cord Sets and Power-Supply Cords  
 UL 827 Central Station Alarm Services  
 UL 834 Heating, Water Supply, and Power Boilers—Electric  
 UL 845 Motor Control Centers  
 UL 869A Standard for Service Equipment  
 UL 884 Underfloor Raceways and Fittings  
 UL 916 Energy Management Equipment  
 UL 917 Clock-Operated Switches  
 UL 924 Emergency Lighting and Power Equipment  
 UL 983 Surveillance Cameras Units  
 UL 998 Humidifiers  
 UL 1008 Transfer Switch Equipment  
 UL 1023 Household Burglar-Alarm System Units  
 UL 1029 High-Intensity Discharge Lamp Ballasts  
 UL 1030 Sheathed Heater Elements  
 UL 1034 Burglary Resistant Electric Locking Mechanisms  
 UL 1054 Special-Use Switches  
 UL 1076 Proprietary Burglar-Alarm Units and Systems  
 UL 1077 Supplementary Protectors for Use in Electrical Equipment  
 UL 1086 Household Trash Compactors  
 UL 1088 Temporary Lighting Strings  
 UL 1090 Electric Snow Movers  
 UL 1097 Double Insulation Systems for Use in Electrical Equipment  
 UL 1206 Electric Commercial Clothes-Washing Equipment  
 UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures  
 UL 1261 Electric Water Heaters for Pools and Tubs  
 UL 1283 Electromagnetic-Interference Filter  
 UL 1286 Office Furnishings  
 UL 1414 Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio-Television-Type Appliances  
 UL 1433 Control Centers for Changing Message Type Electric Signs  
 UL 1447 Electric Lawn Mowers  
 UL 1448 Electric Hedge Trimmers  
 UL 1450 Motor Operated Air Compressors, Vacuum Pumps and Painting Equipment  
 UL 1472 Solid-State Dimming Controls  
 UL 1565 Positioning Devices  
 UL 1581 Standard for Electrical Wires, Cables, and Flexible Cords  
 UL 1610 Central-Station Burglar-Alarm Units  
 UL 1637 Home Health Care Signaling Equipment  
 UL 1638 Visual Signaling Appliances  
 UL 1740 Industrial Robots and Robotic Equipment  
 UL 1778 Uninterruptible Power Supply Equipment  
 UL 1951 Electric Plumbing Accessories  
 UL 1993 Self-Ballasted Lamps and Lamp Adapters  
 UL 1994 Low-Level Path Marking and Lighting Systems  
 UL 1996 Duct Heaters  
 UL 2044 Commercial Closed Circuit Television Equipment  
 UL 2097 Double Insulation Systems for Use in Electronic Equipment  
 UL 2106 Field Erected Boiler Assemblies  
 UL 2111 Overheating Protection for Motors  
 UL 3044 Surveillance Closed Circuit Television Equipment  
 UL 60335-2-8 Household and Similar Electric Appliances, Part 2; Particular

Requirements for Electric Shavers, Hair Clippers and Similar Appliances  
 UL 60335-2-34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors  
 UL 60730-1 Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements  
 UL 60730-2-6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements  
 UL 60730-2-7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches  
 UL 60730-2-10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays  
 UL 60730-2-11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators  
 UL 60730-2-12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks  
 UL 60730-2-13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls  
 UL 60730-2-14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators  
 UL 60730-2-16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls  
 UL 61058-1 Switch for Appliances for Household and Similar Applications

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of TUV, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.*, UL 1008) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1008). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. Contact

"NSSN" (<http://www.nssn.org>), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

### Existing Condition

Currently, OSHA imposes the following condition on its recognition of TUV. This condition would apply also to the recognition of the additional test standards and applies solely to TUV's NRTL operations. It is in addition to any other condition that OSHA normally imposes in its recognition of an organization as an NRTL.

TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products.

### Preliminary Finding on the Application

TUV has submitted an acceptable request for expansion of its recognition as an NRTL. As mentioned, in connection with this request, OSHA has performed an on-site review of TUV's NRTL testing facility. The NRTL has resolved any discrepancies noted by the assessor following the review, and the assessor factored such resolution into the memo on the recommendation (*see* Exhibit 29).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to TUV the expansion of recognition as an NRTL to use the additional test standards listed above, subject to the conditions as noted. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that the TUV Rheinland of North America, Inc., can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition, subject to the above conditions. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUV has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (*see ADDRESSES*), no later than the last date for comments (*see DATES* above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above

no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of TUV's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL3-92 contains all materials in the record concerning TUV's application.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant TUV's expansion request. The Agency will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 25th day of February, 2003.

**John L. Henshaw,**

*Assistant Secretary.*

[FR Doc. 03-5051 Filed 3-3-03; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03-028)]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that Critical Care Innovations, Inc., having offices in Chantilly, Virginia, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,869,238, entitled "Quantitative Method of Measuring Metastatic Activity," and in continuations, divisional applications, and foreign applications corresponding to this case. The 5,869,238 patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

**DATES:** Responses to this notice must be received by March 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058-8452; telephone (281) 483-1001.

Dated: February 26, 2003.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 03-5042 Filed 3-3-03; 8:45 am]

**BILLING CODE 7510-01-P**

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Proposed Collection; Comment Request

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

**DATES:** Comments on this information collection must be submitted on or before May 5, 2003.

**ADDRESSES:** Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: [sdaisey@neh.gov](mailto:sdaisey@neh.gov). Telephone: 202-606-8494.

**SUPPLEMENTARY INFORMATION:** The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the following information:

*Type of Review:* Extension of a currently approved collection.

*Agency:* National Endowment for the Humanities.

*Title of Proposal:* Generic Clearance Authority for the National Endowment for the Humanities.

*OMB Number:* 3136-0134.

*Affected Public:* Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH grantees.

*Total Respondents:* 10,670.

*Frequency of Collection:* On occasion.

*Total Responses:* 10,670.

*Average Time per Response:* Varied according to type of information collection.

*Estimated Total Burden Hours:* 91,412 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

**Lynne Munson,**

*Deputy Chairman.*

[FR Doc. 03-5012 Filed 3-3-03; 8:45 am]

**BILLING CODE 7536-01-P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Monthly and on occasion.

5. *Who will be required or asked to report:* NRC contractors.

6. *An estimate of the number of annual responses:* 2,140.

7. *The estimated number of annual respondents:* 55.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,070 (754 hours billing burden + 316 hours license fee recovery cost burden).

9. *An indication of whether section 3507(d), Pub. L. 104-13 applies:* N/A.

10. *Abstract:* The NRC Division of Contracts in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs are in accordance with the contract terms and conditions.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 3, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150-0109), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301-415-7233.

Dated in Rockville, Maryland, this 25th day of February, 2003.

For the Nuclear Regulatory Commission.

**Brenda Jo Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 03-5026 Filed 3-3-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237, 50-249, 50-254, and 50-265]

### Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Acceptance for Docketing of Application and Notice of Opportunity for a Hearing Regarding Renewal of Facility Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application for the renewal of Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30 for the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2, respectively. Renewal of the licenses would authorize the applicant to operate each of the facilities for an additional 20 years beyond the period specified in the current operating licenses period. The current operating licenses for the Dresden Nuclear Power Station, Units 2 and 3, expire on December 22, 2009, and January 12, 2011, respectively. Both of the current operating licenses for the Quad Cities Nuclear Power Station, Units 1 and 2, expire on December 14, 2012.

On January 3, 2003, the Commission received an application from the Exelon Generation Company, LLC, filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30 for the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2, respectively. A notice of receipt of application, "Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; notice of receipt of application for renewal of Facility Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30 for an additional 20-year period," was published in the **Federal Register** on January 30, 2003 (68 FR 4800).

The Commission's staff (the staff) has determined that the Exelon Generation Company has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current Docket Nos. 50-237, 50-249, 50-254, and 50-265 for Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30, respectively will be

retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the Commission will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the Commission will prepare an environmental impact statement that is a supplement to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants" (May 1996). Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding these meetings will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

Within 30 days from the date of publication of this **Federal Register** notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714.

The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002,

inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows:

In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) the nature of the petitioner's right under the Act to be made a party to the proceeding; (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), 11555 Rockville Pike (first floor) Rockville, Maryland, and on the Commission's Web site at <http://www.nrc.gov> (the Public Electronic Reading Room). If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed by the above date, the Commission may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petitioner must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered

in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specific requirements described above.

Not later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in

delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of the request for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and, because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John L. Skolds, President and Chief Nuclear Officer, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Detailed information about the license renewal process can be found on the Commission's Web page at <http://www.nrc.gov>. A copy of the application is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML030090359. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, the application is available on the NRC Web page at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>, while the application is under review. The staff has verified that a copy of the license renewal application is also available to local residents near the Dresden Nuclear Power Station at the Morris Public Library in Morris, Illinois, and at the Coal City Public Library in Coal City, Illinois. For local residents near the Quad Cities Nuclear Power Station, the license renewal application is available at the River Valley District Library in Port Byron, Illinois, the

Cordova District Library in Cordova, Illinois, and at the Davenport Public Library in Davenport, Iowa.

Dated in Rockville, Maryland, this 26th day of February, 2003.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-5025 Filed 3-3-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-2259]

### Notice of Amendment Request for Pathfinder Mining Company To Revise a Site-Reclamation Milestone in License No. SUA-672 for the Lucky Mc Site Gas Hills, Wyoming, and Opportunity To Provide Comments and To Request a Hearing

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 5, 2002, as supplemented by an e-mail received February 3, 2003, a request from Pathfinder Mining Company to amend License Condition (LC) 61A(3) and 61B(1) of Source Material License SUA-672 for the Lucky Mc Site. The license amendment request proposes to modify LC 61A(3) to change the completion date for radon barrier placement to December 31, 2004, a delay of two years, and to modify LC 61B(1) to change the target completion date for the erosion protection placement to December 31, 2004, a delay of two years.

#### II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T-6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

#### III. Opportunity To Request a Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provision of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications of Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Rulemaking and Adjudications Staff*. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101, or by email to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mining Company, 935 Pendell Boulevard PO Box 730 Mills, Wyoming 82664, *Attention: Tom Hardgrove*; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301)-415-3725, or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov).

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

- (1) The interest of the requestor;
- (2) How that interest may be affected by the results of the proceeding,

including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

#### IV. Other Information

Pathfinder's request to amend LC 61A(3) and 61B(1) of Source Material License SUA-672, which describes the proposed changes to the license condition, and the reason for the request, is being made available for public inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession Numbers: ML023440222 and ML030410500).

Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8-A33, Washington, DC 20555-0001. Telephone: (301) 415-6334; Fax: (301) 415-5390.

Dated at Rockville, Maryland, this 25th day of February, 2003.

For the Nuclear Regulatory Commission

**Daniel M. Gillen,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03-5027 Filed 3-3-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-6622]

### Notice of Amendment Request for Pathfinder Mining Company To Revise a Site-Reclamation Milestone in License No. SUA-442 for the Shirley Basin Site, Wyoming, and Opportunity To Provide Comments and To Request a Hearing

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 26, 2002, as supplemented by an e-mail received February 3, 2003, a request from Pathfinder Mining Company to amend License Condition (LC) 50A(3) & 50B(1)

of Source Material License SUA-442 for the Shirley Basin Site. The license amendment request proposes to modify LC 50A(3) to change the completion date for radon barrier placement to December 31, 2006, a delay of two years, and to modify LC 50B(1) to change the target completion date for the erosion protection placement to December 31, 2006, a delay of one year.

## II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T-6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

## III. Opportunity To Request a Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provision of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications of Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-0001; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-

415-1101, or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mining Company, 935 Pendell Boulevard P.O. Box 730 Mills, Wyoming 82664, Attention: Tom Hardgove; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-0001, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301-415-3725, or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov).

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

## IV. Other Information

Pathfinder's request to amend LC 50A(3) and LC 50B(1) of Source Material License SUA-442, which describes the proposed changes to the license condition, and the reason for the request, is being made available for public inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession Numbers: ML030030172 and ML030410500). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8-A33, Washington, DC 20555-

0001. Telephone: (301) 415-6334; Fax: (301) 415-5390.

Dated at Rockville, Maryland, this 25th day of February, 2003.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03-5028 Filed 3-3-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Notice

**AGENCY** Nuclear Regulatory Commission.

**DATES:** Weeks of March 3, 10, 17, 24, 31, April 7, 2003.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of March 3, 2003*

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waster Safety (Public Meeting) (Contact: Claudia Seelig, 301-415-7243).

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov).

2 p.m. Discussion of Security Issues (Closed—Ex. 1)

*Week of March 10, 2003—Tentative*

There are no meetings scheduled for the Week of March 10, 2003.

*Week of March 17, 2003—Tentative*

Thursday, March 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

2 p.m.—Discussion of Management Issues (Closed—Ex. 2)

*Week of March 24, 2003—Tentative*

Thursday, March 27, 2003

10 a.m.—Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov).

*Week of March 31, 2003—Tentative*

There are no meetings scheduled for the Week of March 31, 2003.



*Week of April 7, 2003—Tentative*

Friday, April 11, 2003

9 a.m.—Meeting with Advisory

Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360)

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov).

12:30 p.m.—Discussion of Management Issues (Closed—Ex. 2)

\* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

The NRC Commission Meeting Schedule can be found on the Internet at: [www.nrc.gov/what-we-do/policy-making/schedule.html](http://www.nrc.gov/what-we-do/policy-making/schedule.html).

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: February 27, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03-5167 Filed 2-28-03; 2:08 pm]

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**NUCLEAR REGULATORY COMMISSION****Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations****I. Background**

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards

consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, February 7, 2003, through February 20, 2003. The last biweekly notice was published on February 18, 2003 (68 FR 7810).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555—

0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 3, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,<sup>1</sup> which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

<sup>1</sup> The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.



following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide

Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

*AmerGen Energy Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1 (TMI-1), Dauphin County, Pennsylvania*

*Date of amendment request:* January 14, 2003.

*Description of amendment request:* The proposed amendment would revise the TMI-1 Technical Specification Sections 3.8.9, 3.15.2, and 4.12.2, and the associated Bases to delete the requirements for the Reactor Building Purge Air Treatment System.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

This change will delete the existing Technical Specifications 3.15.2 and 4.12.2 and revise Technical Specification 3.8.9. The proposed change does not impact nor change the physical configuration of any system, structure or component, nor does it change the manner in which any system is operated. Any change to the system design will be evaluated in accordance with the requirements of 10 CFR 50.59. Failure of the system will neither initiate any type of accident nor increase the severity of the consequences of an accident previously evaluated. Previously approved analyses of the dose consequences of the accidents described in the TMI Unit 1 UFSAR [Updated Final Safety Analysis Report] are not affected by the proposed change and dose consequences remain below the limits of 10 CFR 50.67 without the operation of the Reactor Building Purge Air Treatment System fan and filter components. The Reactor Building Purge Air Treatment System fan and filter components are not required for mitigation of any accident as described in the TMI Unit 1 UFSAR. Reactor Building purge operations will continue to be conducted in accordance with the existing plant administrative controls, which will ensure the limits of 10 CFR part 50 Appendix I are met.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This activity will delete sections of the Technical Specifications applicable to the Reactor Building Purge Air Treatment System fan and filter components. The proposed change does not physically alter any system, structure or component. Any change to the system design will be evaluated in accordance with 10 CFR 50.59. The proposed change will not cause the Reactor Building Purge Air Treatment System to operate outside of its existing design basis. There will be no impact to any operational feature of the system or any procedures that control its operation that could result in a new or different failure mode. The design basis of the Reactor Building Purge Air Treatment System as currently described in the TMI Unit 1 UFSAR is not revised.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The deletion of Technical Specification Sections 3.15.2 and 4.12.2 and the revision of Technical Specification 3.8.9 will not impact the operation of the Reactor Building Purge Air Treatment System. The proposed change will not cause the system to be placed in a configuration outside of its design basis. The proposed change will not reduce the margin of safety of any safety related system. Reactor Building purge operations will continue to be conducted in accordance with existing plant administrative controls, which will ensure the limits of 10 CFR part 50 appendix I are met. The system will continue to be operable in accordance with applicable plant operating procedures.

The system will also continue to be tested and maintained under periodic operations surveillance and the TMI Unit 1 Preventive Maintenance Program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

*NRC Section Chief:* Richard J. Laufer.

*Exelon Generation Company, LLC, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois*

Date of amendment request: January 31, 2003.

*Description of amendment request:*  
The proposed amendments would revise the safety limit minimum critical power ratio for Unit 2 for two loop operation and for single loop operation.

*Basis for proposed no significant hazards consideration determination:*  
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC [Nuclear Regulatory Commission] approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Dresden Nuclear Power Station (DNPS), Unit 2, Cycle 18 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences (AOOs).

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.*, that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed

change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for DNPS, Unit 2, Cycle 18. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.*, that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as AOOs) are met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

*NRC Section Chief:* Anthony J. Mendiola.

*FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio*

*Date of amendment request:*  
December 20, 2002.

*Description of amendment request:*  
The proposed amendment would make an administrative change to Technical Specification (TS) Sections 6.7, 6.14, and 6.15 by replacing "Station Review Board" to "Plant Operations Review Committee" to be consistent with the name for this type of onsite review committee that is used at other FirstEnergy Nuclear Operating Company plants. Additionally, the proposed amendment would make an administrative change to TS 6.8 to update the version of Regulatory Guide 1.33 referenced in that Section.

*Basis for proposed no significant hazards consideration determination:*  
As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The administrative changes do not affect any existing limits, and accident initial conditions, probability, and assumptions remain as previously analyzed. The proposed change to the name of the onsite review committee or the version of the Regulatory Guide will have no significant effect on accident initiation frequency. The proposed changes do not invalidate the assumptions used in evaluating the radiological consequences of any accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes are administrative and do not introduce any new or different accident initiators. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes are administrative and will not have a significant effect on any margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, FENOC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Anthony J. Mendiola.

*Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* January 14, 2003.

*Description of amendment requests:* The proposed amendments would revise the Technical Specifications (TSs) for the control room emergency ventilation system (CREVS) such that movement of irradiated fuel assemblies will be allowed to commence with one

CREVS pressurization train inoperable, provided the appropriate TS Action requirements are implemented.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

*Response:* No

*Probability of Occurrence of an Accident Previously Evaluated*

[Cook Nuclear Plant] CNP TS 3.0.4 requires that TS limiting conditions for operation be met without reliance on the Action statements prior to entering an Applicability condition. The proposed change to the CNP CREVS TS to allow an exception to TS 3.0.4 during movement of irradiated fuel assemblies does not affect any accident initiators or precursors. The CREVS function is purely mitigative. There is no design basis accident that is initiated by a failure of the CREVS function. An exception to TS 3.0.4 will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

*Consequences of an Accident Previously Evaluated*

The accident consequence that is relevant to the proposed change is the dose to control room personnel from a fuel handling accident. The CNP licensing basis analysis of a fuel handling accident has determined that the dose would be within the applicable limits of GDC 19. The current TS specify actions to be taken if one CREVS pressurization train is inoperable during movement of irradiated fuel assemblies. These actions provide assurance that the CREVS will perform its mitigating function as assumed in the accident analysis. Since the proposed change will continue to require these actions, the fuel handling accident analysis will remain valid. Therefore, the consequences of an accident previously analyzed are not significantly increased.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No

The proposed change does not create any new or different accident initiators or precursors. The option to commence movement of irradiated fuel assemblies while relying on the provisions of the Action statement does not affect the manner in which any accident begins. The proposed change does not create any new accident scenarios and does not change the interaction

between the CREVS and any other system. Thus, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No

The margin of safety associated with the proposed change is that associated with the applicable control room dose limit specified by GDC 19. The proposed change will continue to require actions that assure the dose to control room personnel determined by the fuel handling accident analysis remains valid. Therefore, the proposed change does not involve a significant reduction in margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power] I&M has concluded that the proposed change involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* L. Raghavan.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of amendment request:* January 14, 2003.

*Description of amendment request:* The proposed one-time change revises the steam generator inservice inspection frequency requirements in Technical Specification 4.4.5.3.a for V.C. Summer Nuclear Station (VCSNS) immediately after refueling outage RF-12. The change would allow a 58-month maximum inspection interval after two inspections resulting in C-1 classification, rather than a 40-month maximum inspection interval. This change is proposed to eliminate premature/unnecessary steam generator inspections, due to a shortened operating cycle, which will result in significant dose and schedule impacts.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

*Response:* No.

The proposed one-time extension of the Technical Specification inspection interval does not involve changing any structure, system or component or affect plant operations. It is not an initiator of any accident and does not change any FSAR [Final Safety Analysis Report] safety analyses. As such, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

#### *Probability of an Accident*

The VCSNS Steam Generator Management Program includes provisions that are more rigorous than existing Technical Specification requirements. The topics addressed by the program include:

- Steam generator performance criteria, including a reduced operational leakage limit.
- Steam generator repair criteria and repair methods.
- Steam generator inspections that include Degradation Assessments, Condition Monitoring Assessments, and Operational Assessments.
- NDE [nondestructive examination] technique requirements.

The results of the above program requirements demonstrated that all performance requirements were met during Refuel 12.

#### *Consequences of an Accident*

The consequences of design basis accidents are, in part, functions of the specific activity in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the Technical Specifications for operational leakage and for specific activity in the reactor coolant to ensure the plant is operated in its analyzed condition.

The VCSNS program requires a 150-gallon per day per steam generator limit for leakage prior to an accident. This limit is a reduction in the current Technical Specification value. The post accident leak rate remains at the same value assumed by the accident analysis (1 gallon per minute). Since the new operational leakage limit is more conservative than the existing value, it will not increase the likelihood or consequences of an accident.

In consideration of the above, past 100% eddy current results after 5.4 EFPY [effective full-power years] of operation, and the current leak free condition of the steam generators, extending the tube inspection frequency does not involve a significant increase in the consequences of a previously evaluated accident.

#### *Summary*

The proposed change does not affect the design of the steam generators, their method of operation, or primary coolant chemistry controls. The change does not adversely impact any other previously evaluated design basis accident.

Therefore, the change does not affect the consequences of a SGTR [steam generator tube rupture] or any other accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed one-time extension of the Technical Specification inspection interval does not involve changing any structure, system or component or affect plant operations. It is not an initiator of any accident and does not change any FSAR safety analyses.

Primary to secondary leakage that may be experienced during plant conditions is expected to remain within current accident analysis assumptions.

The proposed change does not affect the design of the steam generators, their method of operation, or primary coolant chemistry controls. In addition, the change does not impact any other plant system or component.

Therefore, the change does not create the possibility of a new or different type of accident or malfunction from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

*Response:* No.

The steam generator tubes are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system pressure and inventory. As part of the RCS [reactor coolant system] boundary, the tubes are unique in that they are also relied upon as a heat transfer medium between the primary and secondary systems such that heat may be removed from the primary system. Additionally, the steam generator tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of the steam generator is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. Extending the tube inspection frequency will not alter the design function of the steam generators. Previous inspections conducted during Refuel 12 demonstrate that there is no active tube damage mechanism. The improved design of the Model Delta 75 generator also provides reasonable assurance that leakage is not likely to occur over the next operating period.

For the above reasons, the margin of safety is unchanged and overall plant safety will be maintained by the proposed Technical Specification revision.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the proposed Technical Specification change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Thomas G. Eppink, South Carolina Electric & Gas

Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Section Chief:* John A. Nakoski.

*South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of amendment request:* January 14, 2003.

*Description of amendment request:*

The proposed change will exclude the Charging/Safety Injection (SI) pumps and the Residual Heat Removal pumps from the requirement to vent emergency core cooling system pump casings located in Technical Specification (TS) Section 4.5.2.b.2, eliminate the 31-day venting surveillance for the SI pumps, and add discussion for this exclusion in the Technical Basis of TS Section B 3/4.5.2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes to Technical Specification 4.5.2.b.2 and its associated bases do not contribute to the initiation of any accident previously evaluated. Supporting factors are as follows:

- The safety function of the Charging/SI system, which is related to accident mitigation, has not been altered. Therefore, the probability of an accident is not increased by the exclusion of the Charging/SI system discharge venting requirements.

- The exclusion of the Charging/SI system venting requirements does not affect the integrity of the Charging/SI system such that its function in the control of radiological consequences is affected. In addition, the exclusion of the Charging/SI system venting requirements does not alter any fission product barrier. The exclusion of the Charging/SI system venting requirements does not change, degrade, or prevent the response of the Charging/SI system to accident scenarios, as described in FSAR [Final Safety Analysis Report] Chapter 15. In addition, the exclusion of the Charging/SI system venting requirements does not alter any assumptions previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident described in the FSAR. Therefore, the consequences of an accident previously evaluated in the FSAR will not be increased.

- The clarification of the RHR [residual heat removal] pump piping venting does not affect the integrity of the RHR system such that its function in the control of radiological consequences is affected. In addition, the

clarification does not alter any of the fission product barriers. The clarification does not change, degrade, or prevent the response of the RHR system to accident scenarios, as described in FSAR Chapter 15. In addition, the clarification to the RHR pump piping venting does not alter any assumption previously made in the radiological consequences evaluations nor affect the mitigation of the radiological consequences of an accident described in the FSAR. Therefore, the consequences of an accident previously evaluated in the FSAR will not be increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes to Technical Specification 4.5.3.b.2 and its associated bases do not introduce any new accident initiator mechanisms. The clarification of the RHR pump piping venting and the exclusion of the Charging/SI system venting requirements does not cause the initiation of any accident nor create any new credible limiting single failure. The exclusion of the Charging/SI system venting requirements does not result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than any evaluated in the FSAR.

3. Does this change involve a significant reduction in margin of safety?

*Response:* No.

The exclusion of the Charging/SI system venting requirements does not result in a condition where the design, material, and construction standards that were acceptable prior to this change of the Charging/SI or RHR system venting requirements are altered. The proposed changes to Technical Specification 4.5.2.b.2 and its associated bases will have no effect on the availability, operability, or performance of the Charging/SI or RHR systems. Therefore, the clarification of the RHR pump piping venting and the exclusion of the Charging/SI system venting requirements will not reduce the margin of safety, as described in the bases to any technical specification.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Section Chief:* John A. Nakoski.

*TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* July 25, 2002 as supplemented by letter dated February 5, 2003.

*Brief description of amendments:* The proposed amendments would change the CPSES Facility Operating Licenses as follows: Section 2.C.(4)(b) would be changed to be consistent with the license conditions stated in the U.S. Nuclear Regulatory Commission (NRC) Order and Safety Evaluation issued December 21, 2001, which approved the direct transfer of ownership interest and operating authority for CPSES to TXU Generation Company LP; Section 2.E, which requires reporting any violations of the requirements contained in Section 2.C of the licenses, would be deleted. Additionally, Technical Specification Table 5.5-2 "Steam Generator Tube Inspection," Table 5.5-3, "Steam Generator Repaired Tube Inspection for Unit 1 Only," and Section 5.6.10, "Steam Generator Tube Inspection Report," would be revised to delete the requirement to notify the NRC pursuant to Section 50.72(b)(2), "Immediate notification requirements for operating nuclear power reactors," of Title 10 of the Code of Federal Regulations (10 CFR) if the steam generator tube inspection results are in a C-3 classification. The basis for the proposed no significant hazards consideration determination associated with the application was published in the **Federal Register** on September 3, 2002 (67 FR 56329).

By letter dated February 5, 2003, TXU Generation Company, LP requested that the proposed change to license conditions in Section 2.C.(4)(b) be superseded by the proposed deletion of the license conditions, related to Decommissioning Trusts, specified in Sections 2.C.(4)(a), 2.C.(4)(b), 2.C.(4)(d), 2.C.(4)(e), and 2.C.(6).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), "Notice for public comment; State consultation," the licensee has provided its analysis of the issue of no significant hazards consideration, as they relate to the February 5, 2003 supplement, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The requested changes delete certain license conditions pertaining to Decommissioning Trust Agreements currently in Sections 2.C.(4)(a), 2.C.(4)(b),

2.C.(4)(d), 2.C.(4)(e), and 2.C.(6) of the CPSES Facility Operating Licenses (NPF-87 and NPF-89). The requested changes are consistent with the NRC's Final Rule for Decommissioning Trust Provisions as published in the **Federal Register** on December 24, 2002 (67 FR 78332).

The revised regulations of 10 CFR 50.75(h)(4)[, "Reporting and recordkeeping for decommissioning planning,"] state "Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves 'no significant hazard[s] consideration'."

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This request involves administrative changes only to be consistent with the NRC's Final Rule for Decommissioning Trust Provisions as published in the **Federal Register** (67 FR 78332).

No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

This request involves administrative changes only to be consistent with the NRC's Final Rule for Decommissioning Trust Provisions as published in the **Federal Register** (67 FR 78332).

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c), "Issuance of amendment," are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.  
*NRC Section Chief:* Robert A. Gramm.

#### Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

*Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Date of application for amendments:* November 13, 2002, as supplemented November 20, 2002.

*Brief description of amendments:* The amendments delete Technical Specification 5.5.3, "Post Accident Sampling System (PASS)," and thereby eliminate the requirements to have and maintain the PASS at Brunswick Steam Electric Plant, Units 1 and 2.

*Date of issuance:* February 11, 2003.

*Effective date:* February 11, 2003, to be implemented within 180 days of issuance.

*Amendment Nos.:* 226 & 253.

*Facility Operating License Nos. DPR-71 and DPR-62:* Amendments change the Technical Specifications.

*Date of initial notice in Federal Register:* January 7, 2003 (68 FR 799).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2003.

No significant hazards consideration comments received: No.

*Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* May 14, 2002, as supplemented by letter dated December 6, 2002.

*Brief description of amendment:* The amendment revises the technical specification safety function lift setpoint tolerances for the Safety/Relief valves (S/RVs). The changes also allow surveillance of the relief mode of operation of the S/RVs to be performed without physically lifting the disk of a valve off the seat at power.

*Date of issuance:* February 13, 2003.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 130.

*Facility Operating License No. NPF-47:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 25, 2002 (67 FR 42822).

The December 6, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 2003.

No significant hazards consideration comments received: No.

*Exelon Generation Company, LLC, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois*

*Date of application for amendments:* April 19, 2002, as supplemented by letters dated September 9, 2002 and January 3, 2003.

*Brief description of amendments:* The amendments revise Technical Specifications (TS) 3.6.6, "Containment Spray and Cooling Systems," to change the frequency of Surveillance Requirement (SR) 3.6.6.8 from "10 years" to "Following maintenance that could result in nozzle blockage OR Following fluid flow through nozzles."

*Date of issuance:* February 20, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 126.

*Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 11, 2002 (67 FR 40023) The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The safety evaluation addresses Braidwood Station Units 1 and 2 only. The NRC staff's evaluation of the Byron Units 1 and 2 will be addressed separately.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2003.

No significant hazards consideration comments received: No.

*Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of application for amendment:* June 5, 2002, as supplemented August 13, September 30, October 31, November 13, and November 25, 2002.

*Brief description of amendment:* The amendment approves an increase in maximum steady-state core power level from 2544 megawatts thermal (MWt) to 2568 MWt, an increase of approximately 0.9 percent.

*Date of issuance:* December 4, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment No.:* 205.

*Facility Operating License No. DPR-72:* Amendment revises the Facility



Operating License and the Technical Specifications.

*Date of initial notice in Federal Register:* June 25, 2002 (67 FR 42826). The August 13, September 30, October 31, November 13, and November 25, 2002, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2002.

No significant hazards consideration comments received: No.

*Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of application for amendment:* June 13, 2002.

*Brief description of amendment:* The amendment revises Improved Technical Specification (ITS) 3.3.8, "Emergency Diesel Generator (EDG) Loss of Power Start (LOPS)," by changing the completion time for required action D.2 from 12 to 36 hours. The amendment also corrects a typographical error in ITS 3.3.8.

*Date of issuance:* February 11, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment No.:* 206.

*Facility Operating License No. DPR-72:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 9, 2002 (67 FR 45570).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2003.

No significant hazards consideration comments received: No.

*Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* November 16, 2001, as supplemented by letter dated September 13, 2002.

*Brief description of amendments:* The amendments revise Technical Specification (TS) 1.1, "Definitions, Dose Equivalent I-131," and authorize revision of the Final Safety Analysis Report (FSAR) Update to reflect the revised steam generator tube rupture and main steam line break radiological consequences analyses.

*Date of issuance:* February 20, 2003.

*Effective date:* February 20, 2003, and shall be implemented in the next periodic update to the FSAR Update.

*Amendment Nos.:* Unit 1—156; Unit 2—156.

*Facility Operating License Nos. DPR-80 and DPR-82:* The amendment revised the Technical Specifications and the FSAR Update.

*Date of initial notice in Federal Register:* January 8, 2002 (67 FR 931). The September 13, 2002, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2003.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* March 4, 2002 (TS 01-03).

*Brief description of amendments:* The amendments revise the SQN Unit 1 and 2 Technical Specifications (TSs) by deleting one definition and modifying several subsections contained in TS Section 6.0, "Administrative Controls." These changes have been prepared based on existing NRC guidance.

*Date of issuance:* February 11, 2003.

*Effective date:* As of the date of issuance and shall be implemented within 45 days of issuance.

*Amendment Nos.:* 281 & 272.

*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revise the TSs.

*Date of initial notice in Federal Register:* April 16, 2002 (67 FR 18649). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2003.

No significant hazards consideration comments received: No.

#### **Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the

standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 3, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should

consult a current copy of 10 CFR 2.714,<sup>2</sup> which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If there are problems in accessing the document, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or

controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted

<sup>2</sup> The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraph (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.



either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

*Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina*

*Date of application for amendment:* January 16, 2003, as supplemented on January 31, 2003.

*Brief description of amendment:* The amendment modifies Technical Specification 3.1.7 to permit the use of an alternate method of determining rod position for Control Rod H-10 until the end of Cycle 22 or until the next shutdown of sufficient duration, whichever occurs first.

*Date of issuance:* February 13, 2003.

*Effective date:* February 13, 2003.

*Amendment No.* 197.

*Facility Operating License No. DPR-23.* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* Yes (68 FR 3556 dated January 24, 2003). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by February 24, 2003, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated February 13, 2003.

*Attorney for licensee:* William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Allen G. Howe.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-4623 Filed 3-3-03; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47400; File No. SR-CBOE-2003-03]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

February 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 27, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

CBOE Rule 5.4 sets forth the guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Specifically, Interpretation and Policy .01(a) to CBOE Rule 5.4 provides that absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of Act<sup>3</sup> (the "float" requirement). Interpretation and Policy .01(b) to CBOE Rule 5.4 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 1,600 holders of the underlying security (the "holders" requirement).

The Exchange is now proposing to add new Interpretation and Policy .11 to CBOE Rule 5.4 to clarify the manner in which the Exchange determines whether the so-called "float" of the underlying security was fewer than 6.3 million shares or the number of "holders" of the underlying security was fewer than 1,600.

Specifically, the Exchange proposes to expressly state that in determining whether any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE Rule 5.4 have occurred, the Exchange would monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Interpretation and Policy .01(a) or (b) to CBOE Rule 5.4, the Exchange would not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE Rule 5.4 have occurred, the Exchange shall consider the events specified in

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78p(a).

Interpretation and Policy .01(a) and (b) to have been satisfied.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the current proposal will allow it to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any unnecessary or inappropriate burdens on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>4</sup> The Exchange represents that existing Interpretation and Policy .03 to CBOE Rule 5.4 would continue to apply when the Exchange considers whether any of the events specified in Interpretation and Policy .01 have occurred with respect to an underlying security. Specifically, Interpretation and Policy .03 to CBOE Rule 5.4 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded. Telephone conversation between Patrick Sexton, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-CBOE-2003-03 and should be submitted by March 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4952 Filed 3-3-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47393; File No. SR-CBOE-2002-40]

### **Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index**

February 24, 2003.

## I. Introduction

On July 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4

thereunder,<sup>2</sup> a proposed rule change to provide for the listing and trading of options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. On January 13, 2003, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, as amended, appeared in the **Federal Register** on February 5, 2003.<sup>4</sup> The Commission received no comments on the proposed rule change. On February 19, 2003, CBOE filed Amendment No. 2 to the proposed rule change and requested accelerated effectiveness of the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended, on an accelerated basis.

## II. Description of the Proposed Rule Change

CBOE proposes to list and trade cash-settled, European-style stock index options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. The CBOE Euro 25 Index and the CBOE Asian 25 Index are capitalization-weighted indexes of twenty-five (25) American Depositary Receipts ("ADR"), New York Registered Shares ("NYS"), or NYSE Global Shares<sup>®</sup> ("NGS"), which are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("AMEX"), or the NASDAQ.

### *A. Index Design*

The CBOE Euro 25 Index and the CBOE Asian 25 Index have each been designed to measure the performance of large market capitalization companies in their respective regions.<sup>6</sup> Options on

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 10, 2003 ("Amendment No. 1") (replacing the original filing in its entirety). Amendment No. 1, among other things: (1) Clarified the initial and maintenance criteria for the underlying component securities of the indices, including further detail on the component securities that are ADRs and not subject to comprehensive surveillance agreements; (2) clarified that options on both indices will be A.M. settled; (3) provided more recent market capitalization and weighting figures; and (4) specified that CBOE's surveillance procedures are adequate to monitor the trading of these products.

<sup>4</sup> See Securities Exchange Act Release No. 47287 (January 30, 2003), 68 FR 5942.

<sup>5</sup> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 18, 2003 ("Amendment No. 2"). In Amendment No. 2, CBOE requests accelerated effectiveness of the proposed rule change to begin listing and trading options on the CBOE Euro 25 and CBOE Asian 25 Indexes.

<sup>6</sup> The Exchange will make an updated list of the components underlying each index available to the public on the internet by accessing the following

Continued

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

both indexes shall be A.M. settled. The component securities included in each index must have a minimum market capitalization of \$250 million and a trading volume of at least 500,000 shares on the NYSE, NASDAQ, or AMEX in each of the previous six months to be included in the index.<sup>7</sup>

Unless otherwise specified herein, both indexes shall satisfy the following general initial and maintenance criteria.

(1) At least 75% of the index, in terms of market capitalization weighting, must meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. (2) Any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance agreement shall not in the aggregate represent more than 20% weight of the index's aggregate market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to Rule 5.3, as further discussed below. (3) No single component security will represent more than 30% of the weight of the index. (4) Finally, the five highest weighted component security, in the aggregate, shall not account for more than 60% of the total weight of the index.

CBOE represents that it will review each index quarterly following the expiration of the respective index option contract to ensure that the above criteria are satisfied, and to make quarterly share changes as appropriate. CBOE believes that the CBOE Euro 25 Index satisfies the index criteria provided above.<sup>8</sup> In addition, CBOE believes that the CBOE Asian 25 Index satisfies the index criteria noted above.<sup>9</sup>

URL: <http://www.cboe.com/optprod/index/indexoptions.asp>.

<sup>7</sup> In the case of depository receipts, the market capitalization is determined based on the shares outstanding in the "home" market and the price in U.S. Dollars of the ADRs, NYSs, and NGSSs.

<sup>8</sup> Specifically, CBOE has represented the following as of December 20, 2002: (1) 23 of the 25 securities in the CBOE Euro 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 92.59% of the index by market capitalization weight and 92% by number. (2) 23 of the 24 ADR or NYS components that underlie the index are subject to comprehensive surveillance agreements. (3) No single component represents greater than 30% of the aggregate weight of the CBOE Euro 25 Index. (4) Finally, the five highest weighted component securities in the aggregate do not account for more than 60% of the weight of the Index.

<sup>9</sup> Specifically, CBOE has represented the following as of December 20, 2002: (1) 18 of the 25 components in the CBOE Asia 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 77.73% of the index by market capitalization weight and 72% by number. (2) 13 of the 25 components, representing 68.71% of the index by market capitalization weight, in the CBOE Asian 25 Index are either subject to comprehensive surveillance agreements or are common stocks that are not required to have

## B. Calculation

According to CBOE, the methodology used to calculate the value of the indices is similar to the methodology used to calculate the value of other well-known broad-based indices.<sup>10</sup> The daily calculation of each index is computed by dividing the total market value of the companies in the respective Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the index. The values of each Index will be calculated by CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via Options Price Reporting Authority.

## C. Index Option Trading

In addition to regular Index options, CBOE proposes to provide for the listing of long-term index option series ("LEAPS"®) in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below \$3 will be 0.05 and for series trading above \$3 the minimum tick will be 0.10. The trading hours for options on both indexes will be from 8:30 a.m. to 3:02 p.m. Chicago time.<sup>11</sup>

## D. Maintenance

Both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be monitored and maintained by CBOE. The CBOE will make all necessary adjustments to the indexes to reflect component additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring,

comprehensive surveillance agreements. CBOE also notes that the Commission has specified in the past that a non-U.S. security need not be considered in calculating the 20% threshold if at least 50% of the worldwide trading volume in that particular security occurs within the U.S. market. See CBOE Mexico Index filing, Securities Exchange Act Release No. 34241 (June 22, 1994), 59 FR 33557 (June 29, 1994) (SR-CBOE-94-18). CBOE notes that this is consistent with Interpretation and Policy .03(ii) to CBOE Rule 5.3. Thus, CBOE plans to apply Interpretation and Policy .03 to CBOE Rule 5.3 to any non-U.S. component that exceeds the 20% threshold for non-U.S. components that are not subject to comprehensive surveillance sharing agreements.

<sup>10</sup> CBOE noted that the indices base date is January 2, 2002, when the respective index values were set to 100. On April 16, 2002, the CBOE Euro 25 Index had a closing value of 95.99 and the CBOE Asian 25 Index had a closing value of 95.64.

<sup>11</sup> Exhibits F and G to proposed rule change present proposed contract specifications for CBOE Euro 25 Index options and CBOE Asian 25 Index options.

mergers, or spin-offs involving the underlying components. CBOE represented that over time the number of component securities in the Index may change, but at no time will the number of underlying components drop to less than twenty. In the event of a component replacement, the divisor will be adjusted accordingly to provide continuity in index values.

Absent prior Commission approval, the component securities in either index will not exceed 40 nor be lower than 20 and shall satisfy the criteria as provided above. If the Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

## E. Surveillance

CBOE will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS. For surveillance purposes, CBOE will make all reasonable efforts to monitor the trading activity and other pertinent information relating to the underlying components. CBOE represents that its surveillance procedures are adequate to monitor trading of these products.

## F. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. The exercise settlement value of the Index at option expiration will be calculated by CBOE based on the opening prices of the component securities on the business day prior to expiration. If a component security fails to open for trading, the last available price on the security will be used in the calculation of the index, as is done for currently listed indices.

## G. Position Limits

CBOE proposes to establish position limits for options on the CBOE Euro 25 Index and the CBOE Asian 25 Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent to the limits applicable to options on other

broad-based indices under CBOE Rule 24.4(a).<sup>12</sup>

#### *H. Exchange Rules Applicable*

Except as modified herein, the Rules in Chapter XXIV will be applicable to both CBOE Euro 25 Index options and CBOE Asian 25 Index options. Index option contracts based on both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be subject to the position limit requirements of CBOE Rule 24.4(a). Additionally, CBOE affirms that it possesses the necessary systems capacity to support a new series that would result from the introduction of both CBOE Euro 25 Index options and CBOE Asian 25 Index options. CBOE has also been informed that OPRA has the capacity to support such new series.

### **III. Discussion**

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,<sup>13</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> Specifically, the Commission finds that the listing and trading of options on the Euro 25 Index and Asian 25 Index will permit investors to participate in the price movements of large market capitalization companies in their respective regions on which the indices are based. The Commission also believes that the listing and trading of options on the Euro 25 Index and Asian 25 Index will allow investors holding positions in some or all of the securities underlying the Indexes to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Indexes will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of highly market capitalized European Union and Asian equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of these index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.<sup>15</sup> Nevertheless,

the trading of options on the Euro 25 Index and Asian 25 Index raises several issues related to the design and structure of the Indexes, customer protection, surveillance, and market impact. The Commission believes, however, that the CBOE has adequately addressed these issues for the reasons discussed below.

#### *A. Index Design and Structure*

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit CBOE's rules applicable to the trading of broad-based index options to apply to these Index options. First, both the Euro 25 Index and Asian 25 Index consists of 25 actively traded equity securities. Second, the Euro 25 Index and Asian 25 Index each consist of 25 of the most highly capitalized securities and ADRs in their respective regions. For example, CBOE represented in the proposing release that on December 20, 2002, the market capitalization of the individual securities in the Euro 25 Index ranged from a high of \$97.208 billion to a low of \$5.37 billion, with a mean value of \$30.326 billion. The market capitalization of the individual securities in the Asian 25 Index ranged from a high of \$49.140 billion to a low of \$382.722 million, with a mean value of \$10.696 billion. Third, CBOE's maintenance criteria require that at least 75% of each Index, in terms of market capitalization, must meet the listing criteria for equity options set forth in CBOE Rule 5.3, the minimum market capitalization of component securities is \$250 million, and component securities must have a trading volume of 500,000 shares in each of the previous six months. The Commission believes that CBOE's maintenance criteria will help ensure that the Indexes continue to be comprised of component securities that are highly capitalized and actively traded. Fourth, CBOE's maintenance criteria require that no single component security will represent more than 30% of the weight of the index. The Commission believes that this will help to ensure that the index maintains its broad representative sample of securities in the Euro 25 Index and

Asian 25 Index and that no single or small group of securities dominate the Indexes.

The Commission also believes that the general broad diversification of the Indexes' component securities, as well as their high capitalization and trading activity, minimize the potential for manipulation of the Indexes. First, as discussed above, the Euro 25 Index and Asian 25 Index represent a broad cross-section of highly-capitalized securities, with no single industry group or component security dominating each Index. Second, the securities underlying each Index are relatively actively traded. Third, the Commission believes that the Index continues to represent securities with the highest capitalization and trading volume. In addition, the CBOE has proposed position and exercise limits for the Indexes that are consistent with other broad-based index options.

#### *B. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the Euro 25 and Asian 25 Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the index options and index LEAPS will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Euro 25 and Asian 25 Index options and Index LEAPS.<sup>16</sup>

#### *C. Surveillance*

In evaluating derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and

<sup>12</sup> Specifically, CBOE Rule 24.4(a) imposes a standard position limit of 50,000 contracts on the same side of the market for CBOE's Mexico 30 Index and CBOE's Germany 25 Index.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public

interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options will provide investors with a hedging vehicle that should reflect the overall market of securities representing a segment of the U.S. securities market.

<sup>16</sup> In addition, CBOE has represented that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support these new series of options that would result from the introduction of Index options and Index LEAPS. See letter from Joe Corrigan, Executive Director, OPRA, to John Hiatt, CBOE, dated July 11, 2002.

deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that it is important that the Commission determine that there is an adequate mechanism in place to provide for the exchange of information between the market trading the derivative product and the market on which the securities underlying the derivative product are traded. Such mechanisms enable officials to surveil trading in both the derivative product and the underlying securities. For foreign stocks index derivative products, such mechanisms are especially important for the relevant foreign and domestic exchanges to facilitate the collection of necessary regulatory, surveillance and other information.

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index derivative product comprised of foreign securities is to be traded in the United States.<sup>17</sup> In absence of comprehensive surveillance sharing agreements between the foreign and domestic exchanges, the Commission has relied in the past on surveillance sharing arrangements between the relevant regulators. In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by options on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place between the foreign and domestic exchanges will ensure the integrity of the market.

Under CBOE's current proposal, however, the Commission believes that it is appropriate to permit the listing and trading of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as

long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance sharing agreement shall not in the aggregate represent more than 20% of the weight of each Index's market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to CBOE Rule 5.3.<sup>18</sup>

According to the CBOE, 23 of the 24 ADR or NYS component securities of the Euro 25 Index are subject to comprehensive surveillance sharing agreements. Further, 13 of the 25 component securities of the Asian 25 Index are either subject to comprehensive surveillance sharing agreements, or are common stocks. The ADR components of the Asian 25 Index that are not subject to comprehensive surveillance agreements satisfy the alternative criteria in Interpretation and Policy .03 of CBOE Rule 5.3. In addition, 21 of the 25 component securities or approximately 89% of the aggregate index market capitalization of the Asian 25 Index do satisfy CBOE's acceptable listing standards. The Commission believes that CBOE's standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the market where the security underlying the ADR trades. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. The CBOE represented that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS, and that its surveillance procedures are

adequate to monitor the trading of these products.

#### *D. Market Impact*

The Commission believes that the listing and trading of Euro 25 and Asian 25 Index options on the CBOE will not adversely affect the underlying securities markets. First, as described above, both Indexes are broad-based and comprised of 25 securities with no one component or industry group dominating the Index. Second, as noted above, the component securities contained in the Indexes all have large market capitalizations and are actively traded. Third, existing CBOE index options rules and surveillance procedures will apply to Euro 25 and Asian 25 Index options. Fourth, the position limits of 50,000 contracts on either side of the market, with no more than 30,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Furthermore, the Commission notes that absent prior SEC approval, the component securities in either Index will not exceed 40 or be lower than 20 and shall satisfy CBOE's maintenance criteria. If an Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of the fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed rule change, as amended by Amendment No. 1, has been published for public comment in the **Federal Register** as of February 5, 2003. The Commission has not received any comments on the proposal. Further, the Commission notes that Amendment No. 2 does not change the proposed rule change; rather, CBOE requests that the Commission accelerate the effectiveness of the proposal so that the CBOE may begin the trading of the Euro 25 Index and

<sup>17</sup> The Commission believes that a comprehensive surveillance sharing agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that such agreements require that the parties provide each other, upon request, information about market trading activity, clearing activity, and the identity of the purchasers and sellers of securities underlying the derivative product.

<sup>18</sup> Specifically, the Commission notes that: (1) As provided in Interpretation and Policy .03(ii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance sharing agreement will satisfy CBOE's listing criteria if over 50% of the combined worldwide trading volume in the ADR occurs in the U.S. ADR market for the previous three months from date of selection; or (2) as provided in Interpretation and Policy .03(iii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance sharing agreement will satisfy CBOE's listing criteria if: (a) At least 20% of the worldwide trading volume in that foreign security occurs within the U.S. market and a market for which CBOE has a comprehensive surveillance agreement; (b) the average daily trading volume of the ADR over the past 3 months is 100,000 shares or more; and, (c) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of trading days during the past months.

Asian 25 Index immediately. The Commission is accelerating approval of the proposed rule change, as amended by Amendment No. 1, prior to the expiration of the comment period because these proposed Indexes are similar the other broad-based index options that CBOE currently trades, and CBOE has addressed the relevant regulatory issues, especially pertaining to comprehensive surveillance agreements. Because Amendment No. 2 does not change the proposed rule change but only request acceleration prior to the expiration of the comment period, the Commission is noticing and approving this amendment on an accelerated basis. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, and Amendment Nos. 1 and 2 thereto, on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR-CBOE-2002-40 and should be submitted by March 25, 2003.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-CBOE-2002-40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4953 Filed 3-3-03; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47402; File No. SR-OCC-2002-11]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Stock/Loan Hedge Program

February 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 21, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 16 and September 26, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify OCC's Stock/Loan Hedge Program ("Hedge Program") to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B),

and (C) below, of the most significant aspects of these statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's Hedge Program, under which OCC operates a centralized facility for clearing stock loan/borrow transactions between OCC clearing members. In order to provide enhanced risk management while maintaining the flexibility of the current program, OCC proposes to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

OCC's Hedge Program is intended to facilitate stock lending transactions among OCC's clearing members. Clearing members effecting stock loan/borrow transactions through the Hedge Program obtain the advantages of centralized clearing of those transactions as well as reduced credit risk through the substitution of OCC as the counterparty in all transactions. Unless a clearing member has designated an account as margin-ineligible for purposes of the Hedge Program, stock loan and borrow positions are margined by OCC's TIMS<sup>3</sup> margin system using the same basic risk assessment procedures that are used for positions in options or futures. For many clearing members, this results in an important advantage of the Hedge Program. By taking into consideration the reduction in risk where stock loan/borrow positions are on the opposite side of the market from option positions on the same underlying stock, the margin system will calculate a reduced margin requirement for the account containing the offsetting positions.<sup>4</sup>

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> The Theoretical Intermarket Margin System, known as TIMS, uses advanced portfolio theory to recognize economically and statistically reasonable hedges among various positions and to correctly assess the dollar risk of those positions.

<sup>4</sup> While similar offsets may exist between positions in index options, on the one hand, and a group of stock loan/borrow positions that are identified as baskets comprised of constituent securities in the index, the stock borrow basket/stock loan basket feature of the Hedge Program, although provided for in the OCC By-Laws and Rules, has not been placed into operation for systems reasons. OCC is proposing in this filing to add an interpretation following Section 2 of Article

Continued

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

For other clearing members, however, the margin offset or hedging aspect of the Hedge Program is of little or no benefit. For these clearing members, the nature of their business or the organization of their business within the firm is such that they rarely if ever have stock loan/borrow transactions that provide any significant offset against their options positions. These firms may nevertheless desire to use the Hedge Program because of its other benefits. The participation of these clearing members, which tend to be the larger clearing members, is desirable from OCC's perspective because they contribute liquidity to the program and facilitate inclusion in the program of the hedging activity of some of OCC's less well-capitalized clearing members. It reduces OCC's risk when a market maker clearing firm, for example, carries stock loan/borrow positions in the same OCC account as the positions that the loan/borrow positions hedge.<sup>5</sup> However, in order to do that, the clearing firm must find a stock loan counterparty that is willing to submit the transaction to OCC for clearance. If the counterparty is not itself entering into the transaction for hedging purposes, it may be willing to clear the transaction through OCC only if it can do so on a margin-ineligible basis to avoid additional cost.

For those clearing members whose stock loan/borrow positions are not ordinarily offset by options positions, clearing stock loan/borrow activity through the Hedge Program increases rather than reduces their risk margin requirement at OCC. In the stock loan market, collateral (usually equal to 100% or 102% of the value of the loaned stock) is provided by the borrower to the lender to secure the lender's obligation to return the stock. Daily mark-to-market payments between the borrower and lender maintain the collateral at that level. The same is true when stock loan activity is cleared through the Hedge Program. However, in addition to the collateral that is passed by OCC between the borrowing and lending clearing members, OCC's TIMS system also assesses both the

borrower and the lender an amount of risk margin equal to one day's anticipated maximum market movement in order to protect OCC against a default by the borrower or the lender in its mark-to-market obligations. Because this risk margin is collected only for stock loan transactions that are submitted to OCC, clearing these transactions through OCC imposes additional costs on some clearing members.

In order to address this issue, the Hedge Program permits clearing members to elect to carry stock loan and borrow transactions on a margin-ineligible basis. If a clearing member designates an account as margin-ineligible, OCC will exclude any stock loan or borrow positions in that account when calculating the regular margin requirement for the account. OCC, however, relies on other elements of its protection systems<sup>6</sup> to assess its potential exposure with respect to positions carried in a margin-ineligible account. Margin will be required for positions carried in a margin-ineligible account if predefined concentration monitoring parameters are exceeded.

OCC believes that permitting clearing members to carry stock loan and borrow positions on a margin-ineligible basis is appropriate, safe, and essential to the competitiveness of the Hedge Program. However, in recognition of the fact that this alternative does create uncollateralized risk for OCC, OCC has conducted a study of credit practices in the stock loan market generally and has determined to implement certain measures to reduce its risk.

Although OCC's current risk management practices are consistent with industry standards, OCC is nevertheless proposing elevated financial standards for clearing members wishing to designate accounts as margin-ineligible for purposes of the Hedge Program. Clearing members would be required to maintain excess net capital of at least \$75 million in order to carry margin-ineligible accounts with OCC.<sup>7</sup> OCC believes this requirement is sufficient to ensure strong participant credit standing

without unduly hindering program participation.

The excess net capital requirement would be supplemented by a profitability standard. A clearing member would not be permitted to maintain a margin-ineligible account if it has: (i) Losses in one month equal to or exceeding 50 percent of its excess net capital; (ii) cumulative losses over two consecutive months equal to or exceeding 60 percent of its excess net capital; or (iii) cumulative losses over three consecutive months equal to or exceeding 70 percent of its excess net capital. These excess net capital and profitability standards would be ongoing tests and would have to be met at all times by a clearing member wishing to carry stock loan or borrow positions in any account on a margin-ineligible basis. Clearing members falling out of compliance with these standards would be precluded from clearing opening transactions in a margin-ineligible account while out of compliance.

The rationale for these requirements is that unlike a participant in the regular stock loan market, which has the ability to consider the impact of new transactions on counterparty credit limits before entering into them, OCC becomes a counterparty solely at the discretion of the lender and borrower without the ability to approve or disapprove individual loans on a credit basis before they are accepted for clearance. OCC's excess net capital and profitability standards should substitute for a transaction-by-transaction credit review. Using these straightforward requirements instead of a credit limit or activity cap makes it unnecessary for OCC to reserve the right to reject completed transactions in cases where acceptance would put one of the parties above its cap.

As an additional safety measure, OCC is proposing to amend the definition of "Eligible Stock" to exclude non-option stocks from the program subject to limited exceptions.<sup>8</sup> Loans for non-option stocks will be permitted to be maintained (i) if the loan was accepted prior to the implementation of the restriction or (ii) if the stock is deliverable upon exercise of an

XXI of the By-Laws stating that OCC will provide notice to its clearing members when this feature becomes operative.

<sup>5</sup> As an economic matter, option and security futures positions are hedged not by a clearing member's stock loan or borrow positions, but by its related long or short positions in the underlying stock. However, it is the stock loan/borrow positions that generate cash mark-to-market payments when the market moves against the member's options or futures positions. When the loan/borrow positions are carried in the Hedge Program, OCC is able to capture those payments. This is what enables OCC to reduce its margin requirements for the account in which the positions are carried.

<sup>6</sup> OCC especially relies on its concentration monitoring system, known as ConMon, which provides a comparison of the capital and net worth of each OCC clearing member to the market risk associated with the clearing member's positions. Securities Exchange Act Release No. 40083 (June 11, 1998), 63 FR 33424 (June 18, 1998) [File No. SR-OCC-98-3].

<sup>7</sup> Clearing members currently maintaining margin-ineligible accounts would be given a one-year grace period in which to conform to the minimum excess net capital requirement. If a clearing member is not in compliance at the end of that period, OCC would thereafter treat all of the clearing member's accounts as margin-eligible.

<sup>8</sup> As originally filed, the proposed rule change sought to amend the definition of "Eligible Stock" to require that non-option stocks that are the subject of program transactions have a price per share of at least \$10.00 at the time the transaction is submitted to clearance. The September 26, 2002, amendment proposes to exclude non-option stocks from the program subject to limited exceptions in order to more closely align the use of the Hedge Program with its primary objective of recognizing the intermarket hedges between a participant's stock and options positions.



outstanding option (e.g., where a stock ceases to be an option stock but options on that stock remain outstanding or where a non-option stock is distributed to holders of an option stock and options on the latter are adjusted to require delivery of both stocks). The restriction applies only to non-option stocks because OCC does not want to limit clearing members' ability to include option hedging transactions in their accounts.

Finally, no lender or borrower would be allowed to maintain a stock loan or borrow position in a single issue in a margin-ineligible account if the notional value of the position exceeded the clearing member's excess net capital. This restriction is intended to address concentration risk. Where the positions are carried in a margin-eligible account, the restriction is deemed unnecessary because OCC will hold collateral sufficient to cover the risk.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to OCC because it will promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in the custody and control of OCC by providing for enhanced risk management while maintaining the flexibility of the current Hedge Program.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All submissions should refer to File No. SR-OCC-2002-11 and should be submitted by March 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4951 Filed 3-3-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47396; File No. SR-OCC-2002-14]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Procedures for Processing Late and Supplementary Exercise Instructions**

February 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 28, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend OCC Rules 801 and 805 to modify the existing fees for processing late instructions and supplementary exercise notices and would amend Rule 801 to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise after the start of critical processing.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule change is to amend Rules 801(e) and 805(g) to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified parts of these statements.

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

modify OCC's fees for processing late exercise instructions and supplementary exercise notices and to amend Rule 801(e) to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise notice after the start of critical processing.

#### Background

Rule 801 sets forth the procedures for submitting exercise notices on a business day which is not an expiration date, including the requirement that such submissions be completed by 7 P.M. (All times are Central Time.) Rule 801(e) provides OCC with the authority to permit clearing members to file, revoke, or modify exercise notices after 7 P.M. for the purpose of correcting bona fide errors. Authority to accept or reject such late instructions is vested with the Chairman, Management Vice Chairman, President, or such officer's delegate.

If a late instruction is accepted, Rule 801(e) requires the clearing member submitting the instruction to pay a late filing fee.<sup>3</sup> The fees for late instructions increase the later the notice is received. Late instructions accepted for filing after

the start of critical processing are processed on a best efforts basis and only if the assigned clearing member(s) can be notified before 8 a.m. Previously submitted exercises may not be revoked after the start of critical processing.

These late exercise procedures help provide a monetary incentive for clearing members to take precautions to avoid exercise errors and to identify those errors that do occur earlier in OCC's processing cycle. The earlier late exercise notices are submitted, the easier and less costly it is for OCC to process these exercises. Late exercise notices submitted before the start of OCC's critical processing cycle can be readily accommodated through standard procedures. Late exercise notices submitted after the start of critical processing require supplemental assignment procedures.

Rule 805 sets forth the procedures for submitting exercise notices on expiration dates. Rule 805 permits clearing members to submit exercise notices with respect to expiring options ("supplementary exercise notices") after the normal deadline but before their expiration time (*i.e.*, 10:59 P.M.), by following prescribed procedures. A clearing member submitting such a

supplementary exercise notice is required to pay a late filing fee.<sup>4</sup> As under Rule 801, the filing fees increase the later the notice is received. Supplementary exercise notices submitted in accordance with the prescribed procedures are irrevocable.

#### Discussion

OCC recently completed a review of these rules as a result of an increase in the number of late instructions received from clearing members. Based on that review, OCC is proposing to change the applicable fee schedules and cut-off times for processing late instructions and supplementary exercise notices.

#### Fees

One of the principal purposes for charging a filing fee for late instructions under both Rule 801 and Rule 805 is to provide an incentive for clearing members to discover exercise errors earlier in the processing cycle. The recent increase in the number of late instructions has led OCC to conclude that the current fee schedules do not provide a sufficient incentive. The current and proposed fee schedules are as follows:

#### Rule 801(e)

Submission time	Current fee	Proposed fee
7 p.m.—8 p.m. ....	\$500/any accepted request .....	\$2,000/any accepted request.
8:01 p.m.—start of critical processing .....	\$2,000/any accepted request .....	\$5,000/any accepted request.
After start of critical processing up until 8 a.m. <sup>5</sup>	\$10,000/line item on any exercise notice or modification notice accepted.	\$20,000/line item on any exercise accepted. <sup>6</sup>

<sup>5</sup> On approval of this filing, this time will be 6:30 a.m.

<sup>6</sup> On approval of this filing, only exercise notices (*i.e.*, not modifications) will be accepted after the start of critical processing.

#### Rule 805(g)

Submission time	Current fee	Proposed fee
After the prescribed deadline for the submission of exercise instructions—start of critical processing.	\$2,000/any exercise notice accepted .....	\$5,000/any notice exercise accepted.
After start of critical processing—expiration time	\$10,000/line item on any exercise notice accepted.	\$20,000/line item on any notice accepted.

#### Late Exercise Cut-Off Time; Instructions To Modify

Rule 801(e) does not specify a cut-off time for the acceptance of late exercise notices. To provide for greater consistency in processing late exercise notices, OCC has concluded that it is desirable to establish a uniform cut-off time (*i.e.*, 6:30 a.m.) for their acceptance. A 6:30 A.M. cut-off allows adequate time for OCC to process a late

exercise notice and to inform all assigned clearing members before 8 a.m.

Finally, OCC is proposing to stop accepting modifications to previously submitted exercise instructions after the start of critical processing. Rule 801(e) currently provides that modifications will be accepted after the start of critical processing on a best efforts basis, but revocation instructions will not be accepted after the start of critical

processing. This prohibition is in place because the procedures involved in processing revocations are riskier than those associated with accepting a late exercise due to the need to back out data. A modification that reduces the number of exercised contracts requires use of the same revocation procedures. OCC therefore believes that modifications and revocations should be treated alike. A request by a clearing

<sup>3</sup> Late filings, revocations, and modifications of exercise may also be the subject of disciplinary action. Rule 801(e)(4) and 805(g).

<sup>4</sup> Late filings of supplementary exercise notices may also be the subject of disciplinary action. See note 3 above.

member to exercise additional contracts will be considered as a request to file a late exercise (and not a request to modify a previously submitted exercise notice) and will be handled pursuant to the rules applicable to late exercise instructions.

OCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it improves the efficiency of OCC's procedures for the acceptance of late exercise notices and supplementary exercise notices and therefore promotes the improvement of the national system for the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-14. This file number

should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-2002-14 and should be submitted by March 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4955 Filed 3-3-03; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47385; File No. SR-Phlx-2003-06]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Changes to Its Nasdaq-100 Index Tracking Stock <sup>sm</sup> Fee Schedule**

February 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to change its Nasdaq-100 Index Tracking Stock ("QQQ") <sup>sm</sup> Fee Schedule<sup>3</sup> in two ways: (1) amending the Customer, Non-PACE<sup>4</sup> per-trade fee and (2) eliminating the Specialist \$0.002 per-share fee.

First, in connection with the Phlx's QQQ Fee Schedule, the Phlx proposes to replace the current Customer, Non-PACE per-trade fee of \$1.00 per-trade with the equity transaction charge currently in effect on the Phlx's Summary of Equity Charges. Therefore, the Customer, Non-PACE per-trade fee of \$1.00 per-trade will be replaced with the following:

Transaction charge	Rate per-share
First 500 shares .....	\$0.00
Next 2,000 shares .....	0.0075
Remaining shares .....	0.005

\$50 maximum fee per-trade side.<sup>5</sup>

Second, the Phlx proposes to eliminate the specialist \$0.002 per-share (\$50.00 cap per-trade) fee.

The Phlx intends to implement the changes beginning with transactions settling on or after February 3, 2003.

The text of the proposed rule change is available at the Phlx, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any

<sup>3</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares<sup>sm</sup>, Nasdaq-100 Trust<sup>sm</sup>, Nasdaq-100 Index Tracking Stock<sup>sm</sup> and QQQ<sup>sm</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>sm</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>sm</sup>. Nasdaq has complete control and sole discretion in determining, composing or calculating the Index or in modifying in any way its method for determining, composing or calculating the Index in the future.

<sup>4</sup> "PACE" is the acronym for the Phlx's Automated Communication and Execution System. It is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. See Phlx Rules 229 and 229A.

<sup>5</sup> This fee will be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Phlx by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to simplify the Phlx's fee schedule by applying the same equity transaction charge for customer non-PACE transaction charges for the QQQs that is currently in effect for equity transactions. In addition, the Phlx proposes to delete the specialist fee of \$0.002 per-share to provide the specialist unit with incentives to grow its specialist activity in the QQQs by reducing its costs of doing business and providing it with additional funds to commit to trading, which should, in turn, promote liquidity.

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Phlx members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Phlx neither solicited nor received written comments concerning the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Phlx, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days after the filing of the proposed rule

change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR-Phlx-2003-06 and should be submitted by March 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4954 Filed 3-3-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SOCIAL SECURITY ADMINISTRATION**

**Privacy Act of 1974 as Amended; Computer Matching Program (SSA/ Office of Personnel Management (OPM))—Matches 1005, 1019, 1020, 1021**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of the renewal of an existing computer matching program which is scheduled to expire on April 6, 2003.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer

matching program that SSA is currently conducting with OPM.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate; the Committee on Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 965-8582 or writing to the Associate Commissioner, Office of Income Security Programs, 760 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Office of Income Security Programs as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain the Data Integrity Boards' approval of the match agreements;
- (3) Publish notice of the computer matching program in the **Federal Register**;
- (4) Furnish detailed reports about matching programs to Congress and OMB;
- (5) Notify applicants and beneficiaries that their records are subject to matching; and
- (6) Verify match findings before reducing, suspending, terminating, or

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

denying an individual's benefits or payments.

### **B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 25, 2003.

**Martin H. Gerry,**

*Deputy Commissioner for Disability and Income Security Programs.*

### **Notice of Computer Matching Program, Social Security Administration (SSA) With the Office of Personnel Management (OPM)**

#### *A. Participating Agencies*

SSA and OPM.

#### *B. Purpose of the Matching Program*

This matching program will have four separate components. The purposes of each of these parts are as follows:

*SSA Match 1005:* OPM records will be used in a matching program where SSA will match OPM's data with SSA's records to verify the accuracy of information furnished by applicants and recipients concerning eligibility factors for the Supplemental Security Income (SSI) and Special Veterans' Benefits (SVB) programs. The SSI program provides payments to individuals who have income and resources below levels established by law and regulations, and the SVB program provides special benefits to certain World War II veterans.

*SSA Match 1019:* SSA will match OPM's records of civil service disability benefit and payment data with SSA's records of Social Security disability insurance benefits to identify disability insurance beneficiaries whose benefits should be reduced under the Social Security Act because the disabled worker is receiving a civil service disability annuity benefit. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the disabled worker at the time of initially applying for Social Security benefits and on a continuous basis to ensure any reduction in Social Security disability benefits is based on the current civil service disability benefit amount.

*SSA Match 1020:* OPM records will be used in a matching program where SSA will match OPM's civil service benefit and payment data with SSA's records for disabled and retired annuitants. These annuitants may be subject to the use of a modified benefit computation formula used by SSA under the Social

Security Act for certain persons who receive both a civil service benefit and a Social Security retirement or disability benefit. SSA will use the OPM data to verify the pension or annuity information provided (or identify such information that should have been provided) directly to SSA by the retirees/annuitants.

*SSA Match 1021:* SSA will match OPM's civil service benefit and payment data with SSA's records of beneficiaries receiving Social Security spouse's benefits which are subject to reduction under the Social Security Act when the beneficiary is also receiving a government pension based on employment not covered under that Act. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the SSA beneficiary at the time of initially applying for Social Security benefits and on a continuing basis to ensure that any reduction in Social Security benefits is based on the current pension amount.

#### *C. Authority for Conducting the Matching Program*

*SSA Match 1005:* Section 1631 (e)(1)(B) and (f) of the Social Security Act [42 U.S.C. 1383 (e)(1)(B) and (f)] for the SSI program; section 806 of the Social Security Act [42 U.S.C. 1006] for the SVB program.

*SSA Match 1019:* Section 224 of the Social Security Act [42 U.S.C. 424a].

*SSA Match 1020:* Sections 215 (a)(7) and 215(d)(3) of the Social Security Act [(42 U.S.C. 415 (a)(7) and 415(d)(3)].

*SSA Match 1021:* Section 202 (b)(4)(A), (c)(2)(A), (e)(7)(a), (f)(2)(A), and (g)(4)(A) of the Social Security Act [42 U.S.C. 402 (b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A) and (g)(4)(A)].

#### *D. Categories of Records and Individuals Covered by the Match*

OPM will provide SSA with an electronic file extracted from OPM's Annuity and Survivor Master File. The extracted file will contain information about each new annuitant and annuitants whose pension amount has changed. Each record on the OPM file will be matched to SSA's Master Beneficiary Record or Supplemental Security Income and Special Veterans' Benefits Record for the purposes described above in Section B.

#### *E. Inclusive Dates of the Match*

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner

than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 03-4999 Filed 3-3-03; 8:45 am]

**BILLING CODE 4191-02-P**

## **DEPARTMENT OF STATE**

### **[Public Notice 4292]**

### **Culturally Significant Objects Imported for Exhibition Determinations: "Christian Schad and the Neue Sachlichkeit"**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Christian Schad and the Neue Sachlichkeit," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, NY from on or about March 14, 2003 to on or about June 9, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6981). The address is U.S. Department of State, SA-44, 301 4th Street, SW, Room 700, Washington, DC 20547-0001.

Dated: February 27, 2003.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 03-5091 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-08-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determinations Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) has determined that Rwanda has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Rwanda qualify for the textile and apparel benefits provided under the AGOA.

**DATES:** Effective March 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** William Jackson, Director for African Affairs, Office of the United States Trade Representative, (202) 395-9514.

**SUPPLEMENTARY INFORMATION:** The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106-200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Rwanda as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Rwanda has taken, I have

determined that Rwanda has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Rwanda" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

**Robert B. Zoellick,**

*United States Trade Representative.*

[FR Doc. 03-5052 Filed 3-3-03; 8:45 am]

**BILLING CODE 3190-01-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2002-13411]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The FMCSA announces its decision to exempt 33 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs).

**DATES:** March 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywock, Office of Bus and Truck Standards and Operations, (202) 366-2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

##### Background

On December 12, 2002, the FMCSA published a Notice of its receipt of

applications from 33 individuals, and requested comments from the public (67 FR 76439). The 33 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are: Michael D. Archibald, Howard K. Bradley, Kirk G. Braegger, Daniel L. Butler, Ambrosio E. Calles, Sandy Clark, Jose G. Cruz, Everett A. Doty, Donald K. Driscoll, Donald J. Goretski, Alf M. Gronstedt, David R. Gross, Thomas L. Hall, Raymond G. Hayden, Harry P. Henning, Bruce G. Horner, Jeffery S. Lathrop, Tommy R. Masterson, Daniel A. McKeon, Ralph J. Miles, William R. New, Kirby G. Oathout, Ronald F. Prezzia, Joseph J. Rettenmeier, Thomas C. Rylee, Stanley B. Salkowski III, Wolfgang V. Spekis, James A. Stoudt, Michael G. Thomas, Brian S. Thompson, William H. Twardus, Ronald J. Watt, and Dale R. Wheeler.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 33 petitions on their merits and made a determination to grant the exemptions to all of them. The comment period closed on January 13, 2003. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

#### Vision And Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel

recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers", October 16, 1998, filed in the docket, FHWA-98-4334.) The panel's conclusion supported the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 33 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but seven of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 6 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, *i.e.* the FMCSRs, however, require more.

While possessing a valid CDL or non-CDL, these 33 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 40 years. In the past 3 years, one of the drivers has had a conviction for a traffic violation—speeding. Five drivers were involved in

an accident but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 12, 2002, Notice. Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 67 FR 76439.

#### **Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA-98-3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those

required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 33 applicants receiving an exemption, we note that the applicants have had only five accidents and one traffic violation in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally



required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 33 applicants listed in the December Notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 33 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

One individual wrote in support of granting an exemption to Mr. Archibald.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal

Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

#### Conclusion

After considering the comments to the docket and based upon its evaluation of the 33 exemption applications, the FMCSA exempts Michael D. Archibald, Howard K. Bradley, Kirk G. Braegger, Daniel L. Butler, Ambrosio E. Calles, Sandy Clark, Jose G. Cruz, Everett A. Doty, Donald K. Driscoll, Donald J. Goretzki, Alf M. Gronstedt, David R. Gross, Thomas L. Hall, Raymond G. Hayden, Harry P. Henning, Bruce G. Horner, Jeffery S. Lathrop, Tommy R. Masterson, Daniel A. McKeon, Ralph J. Miles, William R. New, Kirby G. Oathout, Ronald F. Prezzia, Joseph J. Rettenmeier, Thomas C. Rylee, Stanley B. Salkowski III, Wolfgang V. Spekis, James A. Stoudt, Michael G. Thomas, Brian S. Thompson, William H. Twardus, Ronald J. Watt, and Dale R. Wheeler from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a

copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: February 24, 2003.

**Pamela M. Pelcovits,**

*Acting Associate Administrator for Policy and Program Development.*

[FR Doc. 03-5014 Filed 3-3-03; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA-2000-7006, FMCSA-2000-7363, and FMCSA-2000-7918]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** This notice publishes the FMCSA's decision to renew the exemptions for 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations.

**DATES:** This decision is effective March 7, 2003. Comments from interested persons should be submitted by April 3, 2003.

**ADDRESSES:** You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You can also submit comments at <http://dms.dot.gov>. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we

received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Exemption Decision**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds Asuch exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for receiving an exemption (including renewals) are set out in 49 CFR Part 381, Waivers, Exemptions, and Pilot Programs. This notice addresses 29 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 29 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. The individuals are:

Henry Ammons, Jr.  
Larry N. Arrington  
Robert D. Bonner  
James F. Bower  
Ben T. Brown  
David S. Carman  
Darrell B. Dean  
Cedric E. Foster  
Glen T. Garrabrant  
Johnny C. Hall  
John R. Hughes  
Joseph V. Johns  
Alan L. Johnston  
Mark J. Kosciński  
John N. Lanning  
Robert C. Leathers  
Calvin E. Lloyd  
Newton H. Mahoney, III

Luther A. McKinney  
Carl A. Michel, Sr.  
Dennis I. Nelson  
Rance A. Powell  
Shannon E. Rasmussen  
James R. Rieck  
Garfield A. Smith  
Frederick E. St. John  
Daniel R. Viscaya  
Henry L. Walker  
Michael P. Walsh

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

##### **Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 29 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 20245, 65 FR 57230, 65 FR 45817, 65 FR 77066, 65 FR 66286, 66 FR 13825). Each of these 29 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of the safety record for each of these individuals, while driving with the respective vision deficiencies over

the past 2 years, indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

##### **Comments**

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 3, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: February 24, 2003.

**Pamela M. Pelcovits,**

*Acting Associate Administrator for Policy and Program Development.*

[FR Doc. 03-5015 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-EX-P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2003-14223]**

##### **Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption from the vision standard; request for comments.

**SUMMARY:** This notice publishes the FMCSA's receipt of applications from 21 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in the FMCSRs.

**DATES:** Comments must be received on or before April 3, 2003.

**ADDRESSES:** You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You can also submit comments at <http://dms.dot.gov>. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have recently requested an

exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

#### **Qualifications of Applicants**

##### *1. Gordon L. Apple*

Mr. Apple, 71, has had crossed eyes since childhood and alternates from one eye to the other. His best-corrected visual acuity is 20/25 in the right eye and 20/25 in the left. His ophthalmologist examined him in 2002 and certified, "The condition should be stable and he is visually able to drive commercially." Mr. Apple submitted that he has driven straight trucks for 18 years, accumulating 360,000 miles, tractor-trailer combinations for 35 years, accumulating 2.6 million miles, and buses for 6 months, accumulating 2,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

##### *2. Stanley E. Bernard*

Mr. Bernard, 57, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/300 and in the left, 20/20. Following an examination in 2002, his optometrist certified, "Stan Bernard meets the visual requirements to perform the driving tasks needed to operate a commercial vehicle." Mr. Bernard reported that he has driven straight trucks for 30 years, accumulating 1.5 million miles. He holds a Class DM1 driver's license from Alaska. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

##### *3. John D. Bolding, Jr.*

Mr. Bolding, 43, has a macular scar in his left eye due to an injury in 1995. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/200. An optometrist examined him in 2002 and stated, "In our professional opinion, Mr. Bolding has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bolding submitted that he has driven tractor-trailer combinations for 14 years, accumulating 700,000 miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

##### *4. Ronald B. Brown*

Mr. Brown, 55, lost the central vision in his right eye due to a retinal vein

occlusion in 1993. His best-corrected visual acuity in the right eye is hand motions and in the left, 20/25. His ophthalmologist examined him in 2002 and stated, "I would hereby certify that in my medical opinion, Mr. Brown has vision adequate to perform the tasks of his present occupation, that of driving a commercial vehicle." Mr. Brown submitted that he has driven straight trucks for 6 years, accumulating 300,000 miles, and tractor-trailer combinations for 24 years, accumulating 2.9 million miles. He holds a Class A CDL from Maine. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

##### *5. Michael P. Curtin*

Mr. Curtin, 47, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2002, his optometrist certified, "I do not feel this should decrease his ability to safely drive a commercial vehicle." Mr. Curtin submitted that he has driven straight trucks for 20 years, accumulating 100,000 miles, and tractor-trailer combinations for 2 years, accumulating 10,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

##### *6. Albion C. Doe*

Mr. Doe, 44, has a congenital toxoplasmosis scar in his right eye. His visual acuity is counting fingers in the right eye and 20/25 in the left. Following an examination in 2002, his optometrist certified, "Mr. Doe has a congenital toxoplasmosis scar in his right eye which will not impair his ability to drive a commercial vehicle in any way." Mr. Doe submitted that he has driven straight trucks for 15 years, accumulating 780,000 miles. He holds a Class A CDL from New Hampshire. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

##### *7. James M. Eads*

Mr. Eads, 52, is blind in his left eye due to injury at age 5. His best-corrected visual acuity in the right eye is 20/20. An optometrist examined him in 2002 and stated, "His right eye is revealed to have good ocular health and he has adapted well with his monocular vision to safely drive a commercial vehicle." Mr. Eads reported that he has driven straight trucks for 12 years, accumulating 480,000 miles. He holds a chauffeur's license from Indiana. His

driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

**8. Richard L. Elyard**

Mr. Elyard, 55, is blind in his right eye due to an accident 30 years ago. The best-corrected visual acuity in his left eye is 20/20. Following an examination in 2002, his optometrist certified, "It is my opinion that Mr. Elyard is visually qualified to operate a commercial vehicle at this time." Mr. Elyard reported that he has driven tractor-trailer combinations for 30 years, accumulating 3.1 million miles. He holds a Class A CDL from Virginia. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

**9. Michael R. Forschino**

Mr. Forschino, 56, has amblyopia in his left eye. His best-corrected visual acuity is 20/25 in the right eye and 20/50—in the left. His optometrist examined him in 2002 and stated, "Mr. Forschino possesses sufficient vision required to operate a commercial motor vehicle." Mr. Forschino reported that he has driven straight trucks for 7 years, accumulating 434,000 miles. He holds a Class B CDL from Connecticut. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

**10. John C. Gadomski**

Mr. Gadomski, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. His optometrist examined him in 2002 and stated, "I do believe that his vision is sufficient to perform driving tasks required to operate a commercial vehicle." Mr. Gadomski reported that he has driven straight trucks for 15 years, accumulating 1.5 million miles. He holds a Class B CDL from New York. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

**11. Richard H. Hammann**

Mr. Hammann, 64, has reduced vision in his left eye due to trauma in 1998. His best-corrected visual acuity is 20/30 in the right eye and 20/200 in the left. His ophthalmologist examined him in 2002 and stated, "In my opinion he has adequate vision to operate a commercial vehicle." Mr. Hammann reported that he has driven straight trucks for 44 years, accumulating 1.8 million miles, tractor-trailer combinations for 15 years, accumulating 1.2 million miles, and buses for 44 years, accumulating 2.6 million miles. He holds a Class BCDL

CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

**12. Carl M. Hill**

Mr. Hill, 68, has had a histoplasmosis scar in his left eye since childhood. His best-corrected visual acuity is 20/20 in his right eye and 20/100 in the left. An optometrist examined him in 2002 and stated, "In my opinion, Mr. Hill has sufficient vision to operate a commercial vehicle." Mr. Hill reported that he has driven straight trucks for 3 years, accumulating 3,000 miles, tractor-trailer combinations for 13 years, accumulating 975,000 miles, and buses for 1 year, accumulating 5,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

**13. David A. Hiller**

Mr. Hiller, 53, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2002, his optometrist stated, "It is my professional opinion that Mr. Hiller's visual condition has not previously affected his ability to operate a commercial motor vehicle nor should it affect any further performance." Mr. Hiller submitted that he has driven straight trucks for 34 years, accumulating 3.2 million miles. He holds a Class A CDL from Minnesota. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

**14. Billy L. Johnson**

Mr. Johnson, 25, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60–2. His optometrist examined him in 2002 and certified, "I do feel, in my opinion, that he does have sufficient vision to perform commercial driving tasks and it is the same now as over the past few years." Mr. Johnson submitted that he has driven tractor-trailer combinations for 4 years, accumulating 270,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

**15. Christopher J. Kane**

Mr. Kane, 44, has retinal scarring in his left eye due to injury at age 12. His best-corrected visual acuity is 20/20 in the right eye and 20/80—in the left. Following an examination in 2002, his optometrist stated, "I would certify Mr. Kane's vision as sufficient for operating

a commercial vehicle." Mr. Kane reported that he has driven straight trucks for 2 years, accumulating 28,000 miles, and tractor-trailer combinations for 4 years, accumulating 158,000 miles. He holds a Class A CDL from Vermont. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

**16. Jack E. Kettner**

Mr. Kettner, 33, experienced optic atrophy in his left eye due to tumor resection in 1992. His best-corrected visual acuity is 20/20 in the right eye and counting fingers in the left. An optometrist examined him in 2002 and certified, "Jack Kettner has sufficient vision to perform commercial driving tasks." Mr. Kettner submitted that he has driven straight trucks for 10 years, accumulating 150,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

**17. Wallace F. Mahan, Sr.**

Mr. Mahan, 63, experienced a retinal vein occlusion in his right eye in 1998. His best-corrected visual acuity is 20/400+1 in the right eye and 20/25+3 in the left. Following an examination in 2002, his ophthalmologist certified, "It is my medical opinion that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Mahan reported that he has driven tractor-trailer combinations for 40 years, accumulating 1.6 million miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

**18. James R. Petre**

Mr. Petre, 50, has counting fingers vision in his left eye due to a childhood injury. His best-corrected visual acuity in the right eye is 20/20. His optometrist examined him in 2002 and stated, "I do certify in my opinion, that Mr. James Petre has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Petre submitted that he has driven straight trucks for 30 years, accumulating 600,000 miles. Mr. Petre holds a Class B CDL from Maryland. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

**19. William E. Reveal**

Mr. Reveal, 37, has a retinal detachment in his right eye resulting from a congenital condition. His best-corrected visual acuity in the left eye is

20/20 and in the right, hand motions. His optometrist examined him in 2002 and stated, "Due to the clarity of Mr. Reveal's vision in the left eye, and his life long adaptation to the reduction of vision in his right eye, it is my opinion that his vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Reveal reported that he has driven straight trucks for 14 years, accumulating 420,000 miles. He holds a Class B CDL from Ohio. His driving record shows no accidents and two convictions for moving violations—speeding and "failure to obey a traffic control device/sign"—in a CMV. He exceeded the speed limit by 10 mph.

#### 20. Robert P. Sanderson

Mr. Sanderson, 59, is blind in his left eye due to a central retinal artery occlusion that occurred in 1998. His best-corrected visual acuity in the right eye is 20/20. His ophthalmologist examined him in 2002 and certified, "Mr. Sanderson's visual acuity in his good eye is stable and I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sanderson submitted that he has driven straight trucks for 15 years, accumulating 300,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.4 million miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

#### 21. Janusz Tyrpien

Mr. Tyrpien, 45, has had a chorio-retinal scar in his left eye since 1998. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. An optometrist examined him in 2002 and stated, "It is my opinion that he has sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Tyrpien reported that he has driven tractor-trailer combinations for 3 years, accumulating 300,000 miles. He holds a Class A CDL from Florida. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

#### Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: February 24, 2003.

**Pamela M. Pelcovits,**

*Acting Associate Administrator for Policy and Program Development.*

[FR Doc. 03-5017 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than May 5, 2003.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number \_\_\_\_\_." Alternatively, comments may be transmitted via facsimile to (202) 493-6230 or (202) 493-6170, or e-mail to Mr. Brogan at [robert.brogan@fra.dot.gov](mailto:robert.brogan@fra.dot.gov), or to Ms. Steward at [debra.steward@fra.dot.gov](mailto:debra.steward@fra.dot.gov). Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal

Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will

submit for clearance by OMB as required under the PRA:

*Title:* Identification of Cars Moved in Accordance with Order 13528.

*OMB Control Number:* 2130-0506.

*Abstract:* This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). See CFR part 232, appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR part 232, appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

*Form Number(s):* None.

*Affected Public:* Businesses.

*Respondent Universe:* 685 railroads.

*Frequency of Submission:* On occasion.

*Total Responses:* 800 tags.

*Average Time Per Response:* 5 minutes per tag.

*Estimated Total Annual Burden:* 67 hours.

*Status:* Regular Review.

*Title:* Railroad Police Officers.

*OMB Control Number:* 2130-0537.

*Abstract:* Under 49 CFR part 207, railroads are required to notify states of all designated railroad police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

*Form Number(s):* None.

*Affected Public:* Businesses.

*Respondent Universe:* 685 railroads.

*Frequency of Submission:* On occasion.

*Total Responses:* 60 (30 rpts. + 30 rcds.).

*Average Time Per Response:* 5 hrs. p/ rpt. + 10 min. p/rcd.

*Estimated Total Annual Burden:* 155 hours.

*Status:* Regular Review.

*Title:* Control of Alcohol and Drug Use in Railroad Operations.

*OMB Control Number:* 2130-0526.

*Abstract:* The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

*Form Number(s):* FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

*Affected Public:* Businesses.

*Reporting Burden:*

*Reporting Burden:*

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.7—Waivers .....	100,000 employees .....	2 letters .....	2 hours .....	4 hours .....	\$140
219.9.(b)(2)—Responsibility for compliance .....	450 railroads .....	2 requests .....	1 hour .....	2 hours .....	70
219.11(b)(2)—Gen'l conditions for chemical tests .....	450 Medical Fac. ....	1 document .....	15 minutes .....	15 minutes .....	4
219.11 (g) & 219.301 (c)(2)(ii)—Training—Alcohol and Drug .....	5 railroads .....	5 programs .....	3 hours .....	15 hours .....	525
—Training .....	50 railroads .....	50 training class .....	3 hours .....	150 hours .....	5,250
219.23 (d)—Notice to Employee Organizations .....	5 railroads .....	5 notices .....	1 hour .....	5 hours .....	175
219.104/219.107/40.67—Removal from cov. Service .....	450 railroads .....	20 letters .....	1 hour .....	20 hours .....	700
219.201 (c) Good Faith Determination .....	450 railroads .....	10 reports .....	30 minutes .....	5 hours .....	175
219.203/207/209—Notifications by Phone to FRA .....	450 railroads .....	104 phone calls .....	10 minutes .....	17 hours .....	595
219.205—Sample Collection and Handling .....	450 railroads .....	400 forms .....	15 minutes .....	100 hours .....	3,500
—Form covering accidents/incidents .....	450 railroads .....	100 forms .....	10 minutes .....	17 hours .....	595
219.209 (c)—Records—Tests promptly admin. ....	450 railroads .....	40 records .....	30 minutes .....	20 hours .....	700
219.211 (b)—Analysis and follow-up MRO .....	450 railroads .....	8 reports .....	15 minutes .....	2 hours .....	200
219.302 (f)—Tests not promptly administered .....	450 railroads .....	200 records .....	30 minutes .....	100 hours .....	3,500
219.401/403/405—Voluntary referral and Co-worker report policies .....	5 railroads .....	5 report .....	20 hours .....	100 hours .....	3,500
219.405 (c)(1)—Report by Co-worker .....	450 railroads .....	450 reports .....	5 minutes .....	38 hours .....	1,330
219.403/405—SAP Counselor Evaluation ...	450 railroads .....	700 reports .....	30 minutes .....	350 hours .....	12,250
219.601 (a)—RR Random Drug Testing Programs .....	5 railroads .....	5 programs .....	1 hour .....	5 hours .....	175
—Amendments .....	450 railroads .....	20 amendemnts .....	1 hour .....	20 hours .....	700
219.601(b)(1)—Random Selection Proc.—Drug .....	450 railroads .....	5,400 documents .....	4 hours .....	21,600 .....	324,000
219.601(b)(4)/219.601 (d)—Notice to Employees .....	5 railroads .....	100 notices. ....	5 minute .....	1 hour .....	35
—New Railroads .....	5 railroads .....	5 notices .....	10 hours .....	50 hours .....	1,750
—Employee Notices—Tests .....	450 railroads .....	25,000 notices .....	1 minute .....	417 hours .....	14,595
219.603(a)—Specimen Security—Notice By Employee Asking to be Excused—Urine Testing .....	20,000 employees .....	200 excuse doc .....	15 minutes .....	5 hours .....	145
219.607(a)—RR Random Alcohol Testing Programs .....	5 railroads .....	5 programs .....	8 hours .....	40hours .....	1,400

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Amendments to Approved Program .....	450 railroads .....	20 amendments .....	1 hour .....	20 hours .....	700
219.608—Administrator's Determination of Random Alcohol Testing Rate.	53 railroads .....	53 MIS reports .....	2 hours .....	106 hours .....	3,710
219.707 9(c)(d) & 40.33—Review by MRO of Urine Drug Testing Results/Employee Notification;					
—Positive Drug Test Result .....	450 MROs .....	980 reports .....	2 hours .....	1,960 hours .....	196,000
—Copies of Positive Test Results to Employees.	450 railroads .....	980 tests .....	15 minutes .....	245 hours .....	3,675
219.709—Retests—Written Request by employee.	450 railroads .....	10 letters .....	30 minutes .....	5 hours .....	175
219.711(c) & 40.25(f)(22)(ii)—Employee Consent.	100,000 employees .....	60 letters .....	5 minutes .....	5 hours .....	175
40.65—Submission of Test Result to Employer.	450 railroads .....	20 tests .....	15 minutes .....	5 hours .....	175
40.69—Physician's Written Statement .....	450 railroads .....	10 statements .....	1 hour .....	10 hours .....	1,000
40.81—Availability/Disclosure of Alcohol Testing.	450 railroads .....	60 letters .....	5 minutes .....	5 hours .....	175
Information about individual Employees					
—Copies of Records—Breath Alcohol Test	40,000 employees .....	4 requests .....	30 minutes .....	2 hours .....	70
40.83—Maintenance/Disclosure of Records concerning EBTs and BATs.	450 railroads .....	1,500 .....	5 minutes .....	25 hours .....	4,375
219.801—Reporting Alcohol/Drug Misuse Prevention Program Results in a Management info. System Data Collection Form.	53 railroads .....	25 forms .....	4 hours .....	100 hours .....	3,500
—Easy Data Collection Form—No Alcohol/Drug Misuse.	53 railroads .....	28 forms .....	2 hours .....	56 hours .....	1,960
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads .....	100,500 records .....	5 minutes .....	8,375 hours .....	125,625
—Summary Report of Bath Alcohol/Drug Test.	450 railroads .....	200 reports .....	2 hours .....	400 hours .....	6,000
40.29(g)(1) & (5)—Lab Test Result Rpts to MRO.	25 laboratories .....	52,920 .....	30 minutes .....	26,460 hours .....	926,100
40.29(g)(6)—Lab/Monthly Stat Summary of Urinalysis.	25 laboratories .....	600 reports .....	2 hours .....	1,200 hours .....	42,000
40.29(g)(8) & (m)—Recordkeeping—Labs ..	25 laboratories .....	25 document files .....	240 hours .....	6,000 hours .....	210,000
40.31(d)(6) Unsatisfactory Perf. Test Results.	25 laboratories .....	2 reports .....	10 hours .....	20 hours .....	700
40.31(d)(7) & (8)—False Positive Error/Retesting.	25 laboratories .....	1 report .....	50 hours .....	50 hours .....	1,750
—False Positive on Blind Test Performance	25 laboratories .....	1 report .....	50 hours .....	50 hours .....	1,750
40.33—Reporting/Review—Split Sample Test Results.	200 railroads .....	8 letters .....	30 minutes .....	9 hours .....	315
—Split Sample Failure to Reconfirm Drug Presence.	200 railroads .....	2 reports .....	30 minutes .....	1 hour .....	35
40.37—Employee Request for Access to Test Records.	40,000 employees .....	30 requests .....	30 minutes .....	15 hours .....	525

*Respondent Universe:* 450 railroads.

*Frequency of Submission:* On occasion.

*Total Responses:* 190,886.

*Estimated Total Annual Burden:* 68,307 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on February 27, 2003.

**Kathy A. Weiner,**

*Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 03–5041 Filed 3–3–03; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 2, 2002. No comments were received.



**DATES:** Comments must be submitted on or before April 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Otto A. Strassburg, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202-366-4161; Fax: 202-366-7901, or e-mail: [joe.strassburg@marad.dot.gov](mailto:joe.strassburg@marad.dot.gov). Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Approval of Underwriters for Marine Hull Insurance.

*OMB Control Number:* 2133-0517.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Underwriters of marine insurance and marine insurance brokers.

*Form(s):* None.

*Abstract:* This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Applicants will be required to submit financial data upon which MARAD approval would be based. This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

*Annual Estimated Burden Hours:* 46 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are Invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 27, 2003.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 03-5022 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-81-M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2002-12367; Notice 2]

#### Toyota Motor Corporation; Grant of Application for Decision for Determination of Inconsequential Non-Compliance

This notice grants the application by Toyota Motor Corporation (TMC) of Aichi-ken, Japan, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials." TMC has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Pursuant to 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance," TMC has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301, "Motor Vehicle Safety." The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published July 8, 2002, (67 FR 45182) affording an opportunity for comment. The comment closing date was August 7, 2002. No comments were received.

From January 8, 2001 to May 17, 2001, TMC manufactured 5,789 airdams for use in 2002 Lexus SL 430 passenger cars that do not meet the labeling requirements of paragraph S6 of FMVSS No. 205. The airdams were not marked with the "DOT" symbol and a manufacturer's code.

FMVSS No. 205, paragraph S6, "Certification and marking," requires that each piece of glazing material shall be marked in accordance with Section 6 of the American National Standard "Safety Code for Safety Glazing Materials for Glazing Materials for Glazing in Motor Vehicles Operating on Land Highways" Z-26.1-1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26). This specifies all safety glazing materials for use in accordance with this code shall be legibly and permanently marked in letters and numerals at least 0.070 inch (1.78 mm) in height, with the words "American National Standard" or the characters "AS" and, in addition, with a model number that will identify the type of construction of the glazing material. The glazing materials shall also be marked with the manufacturer's distinctive designation or trademark. In addition, FMVSS No. 205, paragraph

S6.2 requires that each piece of glazing material be marked with the symbol "DOT." The TMC airdams were constructed to comply as glazing materials under American National Standard Items 4 and 5, and should have been identified as "AS 4" or "AS 5." TMC stated that the noncompliance consists of the airdams not being marked with the "DOT" symbol and the AS 4 or AS 5 codes.

According to TMC, during its design and testing process, it confirmed that the airdam meets the performance requirements of ANS Z26 for item 4 and item 5 glazing as referenced by FMVSS No. 205. It supplied two "Notice of Equipment Compliance" reports. The American Association of Motor Vehicle Administrators issued the first report, and the Japan Vehicle Inspection Association issued the second. The first, dated 1993, provided compliance information for AS 4 and AS 5 material that was used in the vehicle prior to inclusion of the marking and that expired in 1998. The second, dated 2001, provided compliance information for AS 4 and AS 5 material that was used after the marking was placed on the airdam. TMC claims there is virtually no difference between the compliance data; therefore, TMC believes there is no safety risk.

NHTSA has reviewed TMC's application and, for the reasons discussed in this paragraph, concludes that the noncompliance of the TMC airdam is inconsequential to motor vehicle safety. TMC has provided documentation indicating that the airdams do comply with all other safety performance requirements of the standard except the labeling. Consequently, the noncompliance would not affect the purposes of FMVSS No. 205 that include reducing injuries from impacts to glazing surfaces, ensuring driver visibility, or minimizing the possibility of occupants being thrown through the vehicle windows in collisions. The lack of labeling to the airdam described herein, would not result in inadvertent replacement of the airdams with the wrong glazing material. Since TMC is the only certifying manufacturer of the airdam, a person attempting to replace the airdam would have to contact TMC for the proper part. Consequently TMC, or their representative, would be able to provide the correct replacement airdam.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety.

Accordingly, the application is granted, and the applicant is exempted

from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

The applicant is hereby informed that all products manufactured on and after the date it determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 205.

**Authority:** 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 27, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03-5039 Filed 3-3-03; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before April 3, 2003 to be assured of consideration.

### Financial Crimes Enforcement Network (FinCEN)

*OMB Number:* New.

*Form Number:* None.

*Type of Review:* New collection.

*Title:* FinCEN Office of Regulatory Programs (ORP) Customer Satisfaction Survey.

*Description:* This survey will measure customer satisfaction with regulatory guidance provided by FinCEN.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 100 hours.

*Clearance Officer:* Steve Rudzinski (703) 905-3845, Financial Crimes

Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 03-5018 Filed 3-3-03; 8:45 am]

**BILLING CODE 4810-02-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before April 3, 2003 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545-0973.

*Form Number:* IRS Form 8569.

*Type of Review:* Extension.

*Title:* Geographic Availability Statement.

*Description:* The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program, and other executive positions.

*Respondents:* Individuals or households, Federal Government.

*Estimated Number of Respondents:* 500.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 84 hours.

*OMB Number:* 1545-1128.

*Regulation Project Number:* CO-69-87 Final, CO-68-87 Final and CO-18-90 Final.

*Type of Review:* Extension.

*Title:* CO-69-87 and CO-68-87 Final; Final Regulations under Sections 382

and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; and

CO-18-90 Final: Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

*Description:* (CO-69-87 and CO-68-87) These regulations require reporting by a corporation after it undergoes an "ownership change" under sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO-18-90) These regulations provide rules for the treatment of options under Internal Revenue Code (IRC) section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 75,150.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 2 hours, 56 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 220,575 hours.

*OMB Number:* 1545-1617.

*Regulation Project Number:* REG-124069-02 NPRM, Temporary and Final; and REG-118966-97 Final.

*Type of Review:* Extension.

*Title:* REG-124069-02 NPRM, Temporary and Final Regulations: Section 6038—Returns Required with Respect to Controlled Foreign Partnerships;

REG-118966-97 Final: Information Reporting with Respect to Certain Foreign Partnership and Certain Foreign Corporations.

*Description:* (REG-124069-02) Treasury Regulation § 1.6038-3 requires certain United States persons who own interests in controlled foreign partnerships to annually report information to the IRS on Form 8865. This regulation amends the reporting rules under Treasury Regulation section § 1.6038-e to provide that a U.S. person must follow the filing requirements that are specified in the instructions for Form 8865 when the U.S. person must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065-B.

(REG-118966-97) Section 6038 requires certain U.S. persons who own interest in controlled foreign partnerships or certain foreign corporations to annually report information to the IRS. This regulation

provides reporting rules to identify foreign partnerships and foreign corporations which are controlled by U.S. persons.

*Respondents:* Business or other for-profit, Individual or households.

*Estimated Number of Respondents/Recordkeepers:* 500.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 30 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 250 hours.

*OMB Number:* 1545-1806.

*Form Number:* IRS Form 8883.

*Type of Review:* Revision.

*Title:* Asset Allocation Statement Under 338.

*Description:* Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 201.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—16 hr., 44 min.

Learning about the law or the form—3 hr., 40 min.

Preparing and sending the form to the IRS—4 hr., 6 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 4,929 hours.

*OMB Number:* 1545-1808.

*Form Number:* IRS Form 8887.

*Type of Review:* Extension.

*Title:* Health Insurance Credit Eligibility Certificate.

*Description:* Form 8887 is used to notify a TAA (trade adjustment assistance), alternative TAA, or PBGC (Pension Benefit Guaranty Corporation) recipient that they may qualify for the health insurance credit on Form 8885.

*Respondents:* State, Local or Tribal Government, Individual or households.

*Estimated Number of Respondents/Recordkeepers:* 300,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—6 min.

Learning about the law or the form—2 min.

Preparing the form—5 min.

Copying, assembling, and sending the form to the IRS—10 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 123,000 hours.

*Clearance Officer:* Glenn Kirkland (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395-7316, Office of Management

and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 03-5019 Filed 3-3-03; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before April 3, 2003 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545-1049.

*Regulation Project Number:* 1A-7-88 Final.

*Type of Review:* Extension.

*Title:* Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

*Description:* The final regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 4.

*Estimated Burden Hours Per*

*Respondent/Recordkeeper:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 2 hours.

*OMB Number:* 1545-1557.

*Revenue Procedure Number:* Revenue Procedure 99-39.

*Type of Review:* Extension.

*Title:* Form 941 e-file Program.

*Description:* Revenue Procedure 99-39 provides guidance and the requirements for participating in the Form 941 e-file Program.

*Respondents:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal.

*Estimated Number of Respondents/Recordkeepers:* 390,200.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 37 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 238,863 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports, Management Officer.*

[FR Doc. 03-5020 Filed 3-3-03; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### President's Commission on the United States Postal Service

**AGENCY:** Department of the Treasury, Departmental Offices.

**ACTION:** Notice of Meeting.

**SUMMARY:** Notice is given of a meeting of the President's Commission on the United States Postal Service.

**DATES:** The meeting will be held on Tuesday, March 18, 2003 from 9:30 a.m. to approximately 3 pm.

**ADDRESSES:** The meeting will be held at The LBJ Library and Museum, 8th Floor Atrium, 2313 Red River Street, Austin, Texas 78705.

### FOR FURTHER INFORMATION CONTACT:

Roger Kodat, Designated Federal Official, 202-622-7073.

**SUPPLEMENTARY INFORMATION:** At the public meeting, the Commission will examine (1) the impact of the electronic diversion of First-Class letter mail, (2) the automation and other technologies currently utilized by the United States Postal Service, and (3) potential opportunities for business growth that may be available as result of technological innovations. Witnesses will testify at the invitation of the Commission. At the meeting, the Technologies Challenges and Opportunities Subcommittee will report to the Commission. Seating is limited to a maximum of 200.

Dated: February 26, 2003.

**Roger Kodat,**

*Designated Federal Official.*

[FR Doc. 03-4938 Filed 3-3-03; 8:45 am]

BILLING CODE 4811-16-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### FEDERAL RESERVE SYSTEM FEDERAL DEPOSIT INSURANCE CORPORATION

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On November 8, 2002, the agencies requested public comment for 60 days on proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, adopted some of the proposed revisions after making certain modifications to them. The FFIEC and the agencies are continuing to evaluate the other proposed revisions from the November proposal. In addition, on July 12, 2002, the agencies requested public comment for 60 days on a separate proposed revision to the Call Report related to the collection of data on subprime consumer lending programs, which the FFIEC and the agencies have decided not to implement.

**DATES:** Comments must be submitted on or before April 3, 2003.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control

number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1-5, Attention: 1557-0081, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874-4448, or by e-mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043.

Board: Written comments, which should refer to "Consolidated Reports of Condition and Income, 7100-0036," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov), or by fax to the Office of the Secretary at 202-452-3819 or 202-452-3102. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M-P-500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Consolidated Reports of Condition and Income, 3064-0052." Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898-3838; Internet address: [comments@fdic.gov](mailto:comments@fdic.gov)]. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th

Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to [jlackeyj@omb.eop.gov](mailto:jlackeyj@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Sample copies of the revised Call Report forms for March 31, 2003, can be obtained at the FFIEC's Web site (<http://www.ffiec.gov>). Sample copies of the revised Call Report forms also may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869.

FDIC: Tamara R. Manly, Management Analyst, (202) 898-7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Request for OMB approval to extend, with revision, the following currently approved collections of information:

*Report Title:* Consolidated Reports of Condition and Income.

*Form Number:* FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

*Frequency of Response:* Quarterly.

*Affected Public:* Business or other for-profit.

*For OCC:*

*OMB Number:* 1557-0081.

*Estimated Number of Respondents:* 2,200 national banks.

*Estimated Time per Response:* 42.20 burden hours.

*Estimated Total Annual Burden:*

371,360 burden hours.

*For Board:*

*OMB Number:* 7100-0036.

*Estimated Number of Respondents:* 978 state member banks.

*Estimated Time per Response:* 48.25 burden hours.

*Estimated Total Annual Burden:*

188,754 burden hours.

*For FDIC:*

OMB Number: 3064-0052.

Estimated Number of Respondents:

5,354 insured state nonmember banks.

Estimated Time per Response: 32.85 burden hours.

Estimated Total Annual Burden:

703,411 burden hours.

The estimated time per response for the Call Report is an average, which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). For the Call Report as it would be revised, the time per response for a bank is estimated to range from 15 to 550 hours, depending on individual circumstances.

### General Description of Report

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks, and for all banks for deposit information). Except for selected items, these information collections are not given confidential treatment. Small businesses (i.e., small banks) are affected.

### Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

### Current Actions

On November 8, 2002, the OCC, the Board, and the FDIC jointly published a notice soliciting comments for 60 days on proposed revisions to the Call Report (67 FR 68229). The agencies' notice addressed a number of different types of changes to the Call Report requirements. These changes related to the content of the Call Report itself, the submission deadline for certain banks, and the agencies' process for validating and releasing the data that banks report. First, the agencies proposed several revisions to the content of the Call Report and one instructional

clarification. These revisions focus on improving the information reported by banks that engage in certain specific activities and generally will be applicable to small percentages of banks rather than to most or all banks. This first group of proposed revisions, which were proposed to take effect as of March 31, 2003, include:

- Adding five items dealing with accrued fees and finance charges on credit card accounts, allowances for uncollectible accrued fees and finance charges, and charge-offs of such accrued amounts, which would be reported by banks with a significant volume of credit card activity;

- Splitting the item in the securitization schedule (Schedule RC-S) for seller-provided credit enhancements to the bank's securitization structures (other than credit-enhancing interest-only strips) into separate items, one for on-balance sheet assets and another for other enhancements;

- Separating the current income statement (Schedule RI) item for income from insurance activities into two items, one for insurance underwriting income and the other for income from other insurance activities;

- Adding a yes/no question asking whether any of the bank's Internet Web sites has transactional capability, i.e., allows the bank's customers to execute transactions on their accounts;

- Extending to banks with less than \$100 million in assets the requirement to disclose the fair values of derivative contracts in Schedule RC-L—Derivative and Off-Balance Sheet Items, because current accounting standards require derivatives to be reported on the balance at fair value;

- Changing where banks report any provisions for allocated transfer risk in the income statement (Schedule RI);

- Clarifying the instructions for the reporting of certain loans;

- Clarifying that, for the Memorandum items on the number and amount of deposit accounts by size of account in the insurance assessments schedule (Schedule RC-O), the dollar amount for the size of an account represents the deposit insurance limit in effect on the report date; and

- Creating a supplement to the Call Report that would enable the agencies to collect a limited amount of data from certain banks in the event of an immediate and critical need for specific information.

Second, the agencies proposed to reduce the Call Report filing period for banks with more than one foreign office from 45 to 30 days effective June 30, 2003. In connection with this change, the FDIC would be authorized to contact

not more than 20 of these banks around May 1, 2003, if their March 31 reports have not yet been received in order to obtain certain deposit data needed to estimate insured deposits.

Third, to improve the timeliness with which Call Report data become available to the public, the agencies would begin posting the reports for individual banks on the FDIC's Web site as soon as the agencies' analysis of an individual report has been completed. The agencies stated that this change would begin as early as with the first quarter 2003 reports.

Finally, in conjunction with the planned implementation of a new business model for collecting and validating Call Reports in 2004, the agencies proposed that a bank's Call Report must pass all validity edits and must include an explanatory comment addressing each quality edit exception identified in the bank's report in order for the agencies to accept the bank's Call Report submission.

After considering the comments the agencies received, the FFIEC and the agencies decided to modify the proposed changes relating to allocated transfer risk and the instructional clarification addressing loans held for trading. Some additional insurance-related instructional clarifications also will be made. Except as noted in the following sentence, the FFIEC and the agencies are proceeding with all of the other proposed revisions. In this regard, the FFIEC and the agencies are continuing to evaluate three elements of their November 2002 proposal: the creation of a supplement to the Call Report that would enable the agencies to collect a limited amount of data from certain banks to meet an immediate and critical need for specific information, the reduction from 45 to 30 days in the Call Report filing period for banks with more than one foreign office, and the establishment of edit criteria that would have to be met in order for a bank's Call Report to be accepted. If and when the agencies decide to proceed with one or more of these three proposals, one or more separate **Federal Register** notices would then be published and submissions to OMB would then be made.

With respect to the Call Report filing period for banks with multiple foreign offices, the agencies' proposal had called for the shortening of this period from 45 to 30 days to take effect with the reports for June 30, 2003. The agencies note that the Board proposed on December 24, 2002, to reduce the filing period for the FR Y-9C report filed by certain bank holding companies from 45 to 35 days effective June 30,

2004 (67 FR 78467). The comment period for the Board's proposal ended on February 24, 2003. Because the filing period part of the Call Report proposal remains under study, the agencies are deferring the date when any shortening of the filing period would take effect until a report date after June 30, 2003. However, as long as the current 45-day filing period remains in effect, the FDIC would be authorized to contact not more than 20 banks with one or more foreign offices on or about each May 1 and November 1 if their March 31 and September 30 Call Reports have not been received in order to obtain certain deposit data needed to estimate insured deposits.

In addition, in November 2002, the American Institute of Certified Public Accountants disclosed that it was rescinding its Statement of Position (SOP) No. 92-3, *Accounting for Foreclosed Assets*, because of the issuance by the Financial Accounting Standards Board of Statement No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (FAS 144). Under SOP 92-3, it is rebuttably presumed that foreclosed assets are held for sale. After foreclosure, foreclosed assets held for sale are carried at the lower of fair value less estimated costs to sell or cost, with any deficiency recognized as a valuation allowance, and this determination is made on an individual asset basis. These provisions of SOP 92-3 are not present in FAS 144, but the application of these provisions represents prevalent practice in the banking industry and is consistent with safe and sound banking practices and the accounting objectives set forth in section 37(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(a)). Accordingly, the agencies are retaining these provisions of SOP 92-3 as part of the Call Report instructions and will expect banks to continue to follow these provisions when accounting for foreclosed real estate.

In order to carry out the provisions of section 314(a) of the USA PATRIOT Act of 2001, "Cooperative efforts to deter money laundering," the agencies will collect contact information for the persons who are in charge of each bank's section 314(a) anti-money laundering searches and who could be contacted by federal law enforcement officers for additional information related to anti-terrorist financing and anti-money laundering. This USA PATRIOT Act contact information, which the agencies will begin to collect with the March 31, 2003, Call Reports, is for the confidential use of the agencies and will not be released to the public.

Finally, on July 12, 2002, the agencies jointly published a notice soliciting comments for 60 days on a proposed new Call Report schedule that would collect data on subprime consumer lending programs beginning March 31, 2003 (67 FR 46250). After the comments received on the proposal from 36 banking organizations, bankers' associations, and community and consumer groups, the FFIEC and the agencies decided not to proceed with the proposal.

*Type of Review:* Revisions of currently approved collections.

#### **Comments Received on the Agencies' Proposal**

In response to their November 8, 2002, notice, the agencies received 13 comment letters, eight from banks and banking organizations, three from bankers' associations, one from a governmental entity, and one from a trade group outside the banking industry. The FFIEC and the agencies have considered the comments received from these 13 respondents.

#### *Accrued Fees and Finance Charges on Credit Card Accounts*

Three commenters addressed the proposed new items that would provide data related to accrued fees and finance charges on credit card accounts. Two of these three responded to the agencies' question asking whether these new items should be added to four different Call Report schedules, as had been proposed, or instead placed together in a single separate schedule. Both of these commenters preferred keeping the new items in the four different schedules, which the agencies will continue to do. The other commenter noted that the banks with which it had discussed this proposal stated that they would need until the second quarter 2003 report to complete the systems changes necessary to provide the new information and, therefore, would report good faith estimates in the first quarter 2003 report. As stated in the agencies' proposal, banks will be permitted to provide reasonable estimates for any new item in the first quarter 2003 report, including the new items related to credit card fees and finance charges. This commenter also recommended that the new items permit banks to net "nonprincipal" recoveries from the "nonprincipal" balances charged off within the quarter. Because the new items are intended to provide the agencies and other Call Report users with more complete information on credit card fees and finance charges that are written off as uncollectible, the

agencies decided not to adopt the suggested netting option.

#### *Income from Insurance Activities*

One commenter submitted an extensive number of recommendations concerning the reporting of income from insurance activities and other matters relating to the insurance activities of banking organizations. In this regard, the commenter favored the agencies' proposal to separate the current Call Report income statement item for income from insurance activities into separate items for insurance underwriting income and income from other insurance activities. This commenter also questioned the agencies' instructional language pertaining to underwriting income, noting that it calls for reporting of premium revenue partially on the basis of generally accepted accounting principles (GAAP) and partially on a statutory reporting basis. The agencies' intent has been for premium revenue to be reported in accordance with GAAP. Therefore, the agencies are revising this instructional language.

In addition, the commenter provided other instructional suggestions. These included providing more explicit detail in the instructions concerning items to be included in and excluded from the two separate insurance income items and having the instructions for other assets and other liabilities specifically refer to certain insurance-related assets and liabilities. The agencies are incorporating several of these suggested details into the Call Report instructions.

#### *Allocated Transfer Risk Reserves*

The agencies proposed to change where banks report any provisions for allocated transfer risk in the Call Report income statement. As proposed, these provisions would be included in the provision for loan and lease losses rather than in other noninterest expense, with the amount of any provision for allocated transfer risk included in the provision for loan and lease losses separately disclosed. One commenter supported this change in income statement presentation as being more consistent with GAAP, but recommended that the agencies also change the way in which banks report allocated transfer risk reserves (ATRRs) on the Call Report balance sheet so that they are also presented in the same manner as on institutions' financial statements prepared in accordance with GAAP.

The agencies agreed with this recommendation and are revising the Call Report instructions to instruct banks to include any ATRRs related to

loans and leases in the allowance for loan and lease losses. In making this change, the proposed requirement for banks to disclose the amount of provision for allocated transfer risk included in the provision for loan and lease losses would be replaced with a disclosure of the amount of ATRR related to loans included in the allowance for loan and lease losses. The reporting of loan charge-offs and recoveries and the reconciliation of the loan loss allowance in Call Report Schedule RI-B would also be conformed to this revised balance sheet and income statement presentation method for ATRRs.

#### *Instructional Clarification for the Reporting of Certain Loans*

Because of questions concerning the categorization of certain loans as trading assets, the agencies proposed to revise the Glossary entry for "Trading Account" and establish a rebuttable presumption that loans should not be reported as trading assets. The instructions would have explained that, in order to overcome this presumption for a particular loan, a bank must demonstrate, from the pattern and practice of its activity, that it is acquiring the loan principally for the purpose of selling it in the near term with the objective of generating profits on short-term differences in price. The instructions also would have identified two situations where loans should not be reported as trading assets.

Two commenters addressed this proposed instructional change. One recommended that the agencies avoid creating a "rebuttable presumption" that does not exist in the accounting literature. The other also noted certain difficulties with this presumption. These commenters believe that it is appropriate to classify loans as trading assets under GAAP when they have been acquired as part of a trading activity, trading business, or trading strategy. Reference was also made to the accounting literature for the broker-dealer industry because a broker-dealer's activities are similar to loan trading operations. In addition, one commenter agreed with the proposed instructional language stating that loans originated and held for securitization purposes should be reported as held for sale, but disagreed with the inclusion of loans acquired from third parties and held for securitization in the held-for-sale category.

In considering these two commenters' views, the agencies note that their primary purpose in proposing this instructional revision was to identify situations in which loans for which a

trading designation had been assigned should have been reported as held for sale or held for investment, based on facts and circumstances. As a result, the agencies conclude that it would be more appropriate to describe these situations in the General Instructions section of the Call Report loan schedule (Schedule RC-C, part I), which collects data on both loans held for sale and loans held for investment, rather than in the "Trading Account" Glossary entry. In so doing, the agencies have removed the rebuttable presumption language from the revision they are making to the loan schedule's General Instructions.

Furthermore, the agencies have retained the instructional language that explains that loans acquired, *i.e.*, originated or purchased, and held for securitization purposes should be reported as loans held for sale. The agencies believe that, under GAAP, the purchase and origination of loans for sale to permanent investors, which is a result of the securitization process, should be accounted for in the same manner, *i.e.* as loans held for sale. In this regard, FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities*, states that "[m]ortgage loans are acquired for sale to permanent investors from a variety of sources, including applications received directly from borrowers (in-house originations), purchases from realtors and brokers, [and] purchases from investors."

#### *Earlier Public Release of Individual Bank Call Report Data*

One commenter addressed the agencies' plan to begin posting the Call Reports for individual banks on the FDIC's Web site as soon as the agencies' analysis of an individual report has been completed. Because the agencies currently release the Call Reports for all banks simultaneously approximately 60 days after the quarter-end report date, this change would give the public access to some banks' Call Reports about 30 days sooner than at present. The commenter expressed general support for this change. However, this commenter suggested that, if market conditions were "turbulent," Call Report data should be released by peer group rather than by a small number of banks at a time in order to avoid unintended consequences to a bank whose data became publicly available sooner than the data for its peers.

In implementing this change in their policy for making Call Report data available to the public, which may begin as early as the first quarter 2003 Call Reports, the agencies believe that the method by which they will release the

data should mitigate the commenter's concern. The first quarter in which this posting process is implemented, individual bank reports for which the agencies' analyses have been completed will be posted to the Internet beginning the fifth Friday after the report date, *e.g.*, May 2, 2003, for the March 31, 2003, report or August 1, 2003, for the June 30, 2003, report. Additional bank reports whose analyses have been completed will be posted each Friday thereafter. In quarters subsequent to the first quarter in which the early release of individual bank Call Report data to the Internet has been implemented, this posting process will start on the fourth Friday after the report date. Based on the agencies' experience in processing and analyzing Call Reports, about 1,500 or more individual bank reports would be placed on the FDIC's Web site on the initial posting date. Should the agencies decide to make individual banks' reports publicly available at an earlier date, banks will be notified in advance of such a change.

#### *Other Comments*

One commenter asked the agencies to revise the Call Report to collect additional detailed data on construction and land development loans, *e.g.*, separate data for residential and nonresidential construction loans. Another commenter suggested that "additional institutional detail" be collected on the deposit balances of individuals, partnerships, and corporations. The agencies had not included revisions of this nature in their November 2002 proposal and are not implementing these commenters' recommended changes. However, the agencies are undertaking overall reviews of their Call Report data needs with respect to bank lending activities and bank liabilities and will include the commenters' suggestions in their reviews.

One commenter from a bank stated that because holdings of life insurance with cash surrender value are reported as part of "Other assets" on the Call Report, this reporting treatment gives the impression that this asset, which actually generates earnings, is not an earning asset. This banker observed that most of his bank's peer group comparisons are distorted because the denominator in many ratios is "earning assets," which does not include cash value life insurance. The commenter recommended that these holdings of life insurance should be treated as an earning asset for analytical purposes. The agencies note that the amount of a bank's "earning assets" is not collected in the Call Report, but is a figure that



is calculated from Call Report data for use in the Uniform Bank Performance Report. This recommendation has been referred to the agencies' coordinator for the Uniform Bank Performance Report.

One commenter expressed concern about the increase in the amount of data collected in the Call Report over the last ten years and asked why a small non-complex bank has to complete a detailed report designed for larger banks. The commenter recommended reducing the size of the Call Report for small banks. The Call Report already collects different amounts of data from different size banks even though the report form itself covers banks in all size ranges. The data items that are to be completed by banks that meet certain size or other criteria are clearly identified on the forms. The commenter noted that his bank uses Call Report software to complete the Call Report. Such software can be easily designed to filter out the data items that small banks do not need to complete. Furthermore, the November 2002 proposal further reflects the agencies' recognition that certain data does not need to be reported by all banks. In this regard, the

new items relating to accrued fees and finance charges on credit card accounts are only to be completed by banks that have \$500 million or more in outstanding credit card receivables or are credit card specialty banks.

#### **Request for Comment**

Comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation,

maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of these information collection requests.

Dated: February 26, 2003.

**Mark J. Tenhundfeld,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, February 25, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 26th day of February, 2003.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 03-4998 Filed 3-3-03; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P**



# Federal Register

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**Tuesday,  
March 4, 2003**

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## **Part II**

## **Department of Transportation**

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**14 CFR Part 47**

**Aircraft Registration Requirements;  
Clarification of “Court of Competent  
Jurisdiction”; Final rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 47**

[Docket No. FAA-2002-12377; Amendment No. 47-26]

RIN 2120-AH75

**Aircraft Registration Requirements; Clarification of "Court of Competent Jurisdiction"**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FAA is amending language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This amendment clarifies the term "court of competent jurisdiction", and what the Administrator considers satisfactory evidence that foreign registration of an aircraft has ended or is invalid. This amendment is necessary for FAA compliance with obligations from the Convention on International Civil Aviation.

**DATES:** Effective April 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Stanford, Aircraft Registration Branch, AFS-750, Civil Aviation Registry, Flight Standards Service, Federal Aviation Administration, Post Office Box 25504, Oklahoma City, OK 73125; Telephone (405) 954-3131.

**SUPPLEMENTARY INFORMATION:**

**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at (3) <http://www.faa.gov/avr/armhome.htm>; or
- (3) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with

small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question about this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbreffa.htm>, or by e-mailing us at [9-AWA-SBREFA@faa.gov](mailto:9-AWA-SBREFA@faa.gov).

**Background**

On August 9, 1946, the United States became a party to the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention). Under the Chicago Convention, the contracting parties agreed on certain principles and arrangements so international civil aviation could develop in a safe and orderly manner.

In considering the orderly registration of aircraft, Chapter III-NATIONALITY OF AIRCRAFT, Article 17 of the Chicago Convention, provides that "aircraft have the nationality of the State in which they are registered." Therefore, "an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another" (Article 18). The rules for changing registration mandate that "the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations" (Article 19). Before registering an aircraft, an importing State must first ensure that the exporting State has removed the aircraft from its registry. Under Article 21 of the Chicago Convention, the importing State requests proof from the State of last registration that registration of a specific aircraft has ended and the aircraft is no longer on the exporting State's registry.

In promulgating § 47.37(b)(2), the Administrator determined that "a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid" is satisfactory evidence of termination of foreign registration. The Administrator interprets the phrase "court of competent jurisdiction" to be a court of the country where the aircraft was last registered.

In two recent cases (*IAL Aircraft Holding, Inc. v. Federal Aviation Administration*, 206 F.3d 1042, vacated, 216 F.3d 1304 (11th Cir. 2000) [hereinafter referred to as *IAL Aircraft*] and *Air One Helicopters, Inc. v. Federal Aviation Admin.*, 86 F.3d 880 (9th Cir. 1996) [hereinafter referred to as *Air One*]), a divided panel of the court

interpreted the phrase "court of competent jurisdiction" differently from FAA. In *Air One*, the Ninth Circuit decided that a United States court of appeals was itself a "court of competent jurisdiction" capable of rejecting a determination of the Spanish registry that the aircraft's Spanish registry was valid. In *IAL Aircraft*, the Eleventh Circuit held that a state trial court having jurisdiction over the aircraft *in rem* was a "court of competent jurisdiction." Therefore, a state trial court could determine that a Brazilian registration was invalid, despite Brazil's continued insistence that its registration remained valid.

On July 6, 2000, the Eleventh Circuit vacated its earlier decision. The Eleventh Circuit found the court lacked Article III jurisdiction at the time it issued its decision. *IAL Aircraft* had not disclosed the sale of the aircraft while the case was pending before the court.

FAA does not agree with these decisions, which reject the agency's interpretation of its own regulation. Moreover, continuing to litigate such cases of interpretation would adversely impact FAA resources. Therefore, on May 17, 2002, FAA issued a notice of proposed rulemaking to amend § 47.37(b)(2). The proposed amendment would add language to that section to clearly state that the "court of competent jurisdiction" must be a court of the country where the aircraft was last registered. FAA did not receive any comments about the proposal.

**Paperwork Reduction Act**

There are no current or new requirements for information collection associated with this amendment.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. This amendment is necessary for FAA compliance with the agreements contained in the Convention.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination the

benefits of the intended regulation justify its costs. Our assessment of this rulemaking shows that its economic impact is minimal because the issues addressed by this change rarely occur. FAA is aware of only two cases where judgments were pursued and obtained in countries other than where the aircraft was last registered (*IAL Aircraft Holding, Inc. v. Federal Aviation Administration*, 206 F.3d 1042, 1045, vacated, 216 F.3d 1304 (11th Cir. 2000) and *Air One Helicopters, Inc. v. Federal Aviation Admin.*, 86 F.3d 880 (9th Cir. 1996)). The judgment occurred in the country where the aircraft was last registered in other similar aircraft registration changes.

This amendment will affect only those few cases where the change in aircraft registration is filed in the United States rather than the country where the aircraft was last registered. While there may be some costs associated with these cases, such costs would vary depending on the country of last registration. Sometimes, the costs may be less than those normally associated with obtaining a proper judgment from a court of the United States.

We have not prepared a "regulatory impact analysis" because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order. Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis normally required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to prepare a full evaluation where the economic impact of a rule is minimal.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact of a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as

described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule clarifies the term "court of competent jurisdiction." This action will have a minimal impact on small entities in the aviation industry. Consequently, FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities in the aviation industry.

#### Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities, and thus have a neutral trade impact.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

#### Executive Order 13132, Federalism

FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

#### Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address in the ADDRESSES section.

#### Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

#### Energy Impact

FAA has assessed the energy impact of the final rule in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined the final rule is not a major regulatory action under the EPCA.

#### List of Subjects in 14 CFR Part 47

Aircraft; Reporting and recordkeeping requirements.

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 47 of Chapter I of Title 14, Code of Federal Regulations as follows:

#### PART 47—AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44111, 44703–44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

2. Amend § 47.37(b)(2) to read as follows:

**§ 47.37 Aircraft last previously registered in a foreign country.**  
\* \* \* \* \*  
(b) \* \* \*

(2) A final judgment or decree of a court of competent jurisdiction of the foreign country, determining that, under the laws of that country, the registration has become invalid.

Issued in Washington, DC, on February 26, 2003.  
**Marion C. Blakey,**  
*Administrator.*  
[FR Doc. 03–5040 Filed 3–3–03; 8:45 am]  
**BILLING CODE 4910–13–P**



# Federal Register

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**Tuesday,  
March 4, 2003**

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## **Part III**

## **Department of Energy**

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**10 CFR Part 490**

**Office of Energy Efficiency and  
Renewable Energy; Alternative Fuel  
Transportation Program; Private and  
Local Government Fleet Determination;  
Proposed Rule**

## DEPARTMENT OF ENERGY

## 10 CFR Part 490

[Docket No. EE-RM-FCVT-03-001]

RIN 1904-AA98

**Office of Energy Efficiency and Renewable Energy; Alternative Fuel Transportation Program; Private and Local Government Fleet Determination**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of proposed rulemaking (NPR) and public hearing.

**SUMMARY:** Pursuant to the Energy Policy Act of 1992 (EPA), the Department of Energy proposes to determine that a regulatory requirement for the owners and operators of certain private and local government fleets to acquire alternative fueled vehicles is not "necessary," and thus cannot and should not be promulgated, because such a program would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States and thus would not appreciably contribute to the achievement of the replacement fuel goal set forth in section 502(b)(2) of EPA.

**DATES:** Written comments (eight copies and, if possible, an e-mail copy) on the proposed determination must be received by DOE on or before June 2, 2003; electronic copies of comments may be sent to the e-mail address listed below.

Oral views, data, and arguments may be presented at the public hearing, which will be held on May 7, 2003. The length of each oral presentation is limited to 10 minutes. The public hearing will be held at the U.S. Department of Energy Main Auditorium, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Requests to speak at the hearing must be submitted to DOE no later than 4 p.m. on April 22, 2003.

**ADDRESSES:** Written comments (eight copies) and requests to speak at the public hearing should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2G, Docket Number EE-RM-FCVT-03-001, 1000 Independence Avenue, SW., Washington, DC 20585-0121. E-mails may be sent to: [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov).

Copies of this notice, the transcript from the hearing, and written comments will be placed at the following website address: [http://www.ott.doe.gov/epact/private\\_fleets.shtml](http://www.ott.doe.gov/epact/private_fleets.shtml). You may also

access these documents using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. To request a copy of this notice or arrange on-site access to paper copies of other information in the docket, contact Mr. Dana V. O'Hara at the phone number or e-mail address below.

For more information concerning public participation in this rulemaking see the "Opportunity for Public Comment" section found in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice: Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE-2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0121; (202) 586-9171; [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Introduction
- II. Previous Opportunities for Public Comment
- III. Private and Local Government Fleet Determination
- IV. Whether to Modify Replacement Fuel Goal
- V. Opportunity for Public Comment
- VI. Review Under Executive Order 12988
- VII. Review Under Executive Order 12866
- VIII. Review Under the Regulatory Flexibility Act
- IX. Review Under the Paperwork Reduction Act
- X. Review Under the National Environmental Policy Act
- XI. Review Under Executive Order 13132
- XII. Review of Impact on State Governments—Economic Impact on States
- XIII. Review of Unfunded Mandates Reform Act of 1995
- XIV. Review of Treasury and General Government Appropriations Act, 1999
- XV. Review of Treasury and General Government Appropriations Act, 2001
- XVI. Review Under Executive Order 13175
- XVII. Review Under Executive Order 13045
- XVIII. Review Under Executive Order 13211

**I. Introduction**

Section 507(e) of EPA states that " \* \* \* the Secretary shall . . . determine whether a fleet requirement program is necessary under this section" with respect to certain private and local government vehicle fleets (42 U.S.C. 13257(e)). The Department of Energy (DOE) proposes to determine that it is not "necessary" to promulgate a regulation requiring these fleets to acquire alternative fueled vehicles

(AFVs). DOE proposes this determination because implementation of a private and local government fleet rule program would not appreciably contribute to the achievement of EPA's existing 2010 replacement fuel goal of 30 percent, or of a revised replacement fuel goal were one to be adopted. DOE's review of EPA, existing fleet programs, and the status of markets for alternative fuels and AFVs leads it to conclude that adopting a private and local government fleet rule would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States.

This conclusion and DOE's proposed determination are based on two interrelated findings and reasons. First, DOE has concluded that the number of fleets that would be covered by a private and local government fleet mandate and the number of AFV acquisitions that would occur are too small to cause an appreciable increase in the percentage of replacement fuel that is used as motor fuel. This is because of the limitations placed by EPA itself on DOE's authority to promulgate a private and local government fleet acquisition mandate. For example, and as will be explained below, a private and local government fleet program could only apply to light duty vehicles (*i.e.*, less than 8,500 lbs. gross vehicle weight rating (GVWR)), to fleets that are located in certain metropolitan areas, and could not apply to a number of excluded vehicle classes and types (*e.g.*, rental vehicles, emergency vehicles, and vehicles garaged at residences overnight). Furthermore, EPA requires that even fleets potentially covered by a fleet mandate may avoid some or all of its acquisition requirements if they fall within one of the numerous exemptions set forth in the statute.

Second, even if a private and local government fleet acquisition mandate were adopted and substantial numbers of AFVs were acquired as a result, there is no assurance that the AFVs acquired by covered fleets would actually use replacement fuel. EPA gives DOE no authority to require that vehicles acquired by private and local government fleets use any particular fuel. Moreover, DOE's experience with implementation of the Federal fleet, State fleet, and alternative fuel provider fleet programs required by EPA leads DOE to conclude that as a result of the lack of alternative fuel infrastructure, lack of suitable AFV models, lack of reasonable vehicle prices, and high alternative fuel costs relative to conventional motor fuels, market forces would prevent appreciable increases in



replacement fuel use in covered fleets, even if DOE were to impose a private and local government fleet vehicle acquisition requirement pursuant to EPCA sections 507(e) and (g).

DOE's proposed determination that a private and local government fleet regulatory program is not "necessary" under the standards set forth in EPCA section 507(e) and therefore cannot and should not be promulgated is also consistent with the view expressed in many of the comments DOE received during earlier stages of work that preceded issuance of this notice of proposed rulemaking. In these earlier stages, commenters (especially potentially covered fleets) expressed concerns regarding the lack of available fueling infrastructure and suitable AFV models. In addition, a number of alternative fuel proponents stated that the best means of increasing the introduction of AFVs and the use of alternative fuels would be to provide incentives for their use rather than adopting new mandates. These proponents urged DOE to support legislative initiatives that would provide incentives for the use of AFVs and alternative fuels. This Administration is in fact supporting the adoption of incentives for high-efficiency, advanced technology vehicles, which include AFVs. In addition, the President and DOE have proposed the FreedomCAR and Hydrogen Fuel Initiative, which is a major new initiative focused on significantly increasing the availability and use of non-petroleum motor fuels.

In evaluating whether to propose adoption of a private and local government fleet rule under EPCA sections 507(e) and (g), DOE reviewed the status of progress toward achieving the current replacement fuel goal. Based on this review, DOE believes that extraordinary measures would be required to achieve the current goal of 30 percent petroleum replacement by 2010.

At the same time, DOE takes note of the fact that Congress is widely expected to take up comprehensive legislation that may significantly affect our nation's energy future and may bear importantly not only on the achievability of the current goals but also on what any potential revised goals might be. In addition, the FreedomCAR and Hydrogen Fuel Initiative is focused on dramatically increasing the availability and use of replacement fuels and reducing reliance on petroleum as a motor fuel. In light of the momentum that this effort is engendering; in light of what DOE understands to be the principal purpose of EPCA's

replacement fuel goals<sup>1</sup>—to keep the pressure on policymakers, industry and the public to engage in aggressive action to expand the use of alternative and replacement fuels; and in light of the likelihood of consideration and enactment of new legislation this Congress that would have a significant bearing on these issues, DOE has concluded that it should not make a determination under EPCA concerning the achievability of the 2010 goals at this time. Therefore DOE also is not proposing at this time to use its EPCA authority to seek to modify these goals. DOE will continue to evaluate this issue.

#### A. Authority

The issue DOE addresses in this notice of proposed rulemaking is whether a private and local government fleet requirement program is "necessary" under EPCA section 507(e). That section states that a private and local government fleet program shall be promulgated if DOE determines such a program is "necessary," and that such a program "shall be considered necessary" only if DOE finds that "the goal of replacement fuel use \* \* \* is not expected to be actually achieved \* \* \* without such a fleet requirement program" and "such goal is practicable and actually achievable \* \* \* through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals."

The statutory definitions of vehicles and fuels in EPCA are key to DOE's determination discussed in this notice. An "alternative fuel vehicle" is a "dedicated vehicle or a dual fuel vehicle." (EPCA section 301(3)). A "dual fuel" vehicle is one "capable of operating on alternative fuel and on gasoline or diesel fuel." (EPCA section 301(8)(A)). The purchase of an AFV does not assure that "alternative" or "replacement" fuel will be used to operate the AFV. As discussed below, fleets are not required to use alternative or replacement fuel in their AFVs (except for alternative fuel providers, which are required to use alternative

fuel in their AFVs by section 501(a)(4) of EPCA).

"Replacement fuel" is defined by EPCA to mean "*the portion of any motor fuel* that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquified fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers," or any other fuel that the Secretary determines meets certain statutory requirements. (42 U.S.C. 13211(14) (emphasis added)) "Alternative fuel" is defined to include many of the same types of fuels (such as methanol, natural gas, hydrogen and electricity), but also includes certain "mixtures" of petroleum-based fuel and other fuels. (10 CFR 490.2 (2002) <sup>2</sup>) Thus, a certain mixture might constitute an "alternative fuel," but only the portion of the fuel that fell within the definition of "replacement fuel" would actually constitute "replacement fuel." For example, a mixture of 85 percent methanol and 15 percent gasoline would, in its entirety, constitute "alternative fuel," but only the 85 percent that was methanol would constitute "replacement fuel." Also by way of example, gasohol (a fuel blend typically consisting of approximately 10 percent ethanol and 90 percent gasoline), considered as a total fuel blend, would not qualify as an "alternative fuel," but the 10 percent that is ethanol would qualify as "replacement fuel."

The rulemaking process for determining whether to promulgate a private and local government fleet rule is very different from the previous DOE rulemaking concerning State government and alternative fuel provider fleets. With that rule, DOE was not required to make any findings in order to promulgate a fleet rule; EPCA itself imposed the fleet program. The determination of whether to adopt AFV acquisition mandates for private and local government fleets, however, is conditional and depends on several critical findings by DOE. Regulations covering private and local government fleets, if adopted, in other respects would likely be similar to those already in place for State government and alternative fuel provider fleets. These regulations essentially require that a percentage of a covered fleet's annual acquisitions of light-duty vehicles must be AFVs. *See Alternative Fuel Transportation Program*, 10 CFR Part

<sup>1</sup> The replacement fuel goals call for a certain percentage of motor fuel demand to be supplied by "replacement fuels." Because petroleum (i.e., gasoline and diesel) is the dominant fuel used for motor vehicles, the replacement fuel goals are sometimes referred to in this document as petroleum replacement goals. DOE notes that because the EPCA goals reference "replacement fuel," they cannot be met by simply using less petroleum (such as through efficiency measures), but rather must be met by increasing the overall percentage of non-petroleum or replacement fuels that is used.

<sup>2</sup> EPCA defines "alternative fuel" (see 42 U.S.C. 13211(2)), but DOE has exercised its authority to modify, by regulation, this definition. Therefore, the currently effective definition of "alternative fuel" is set forth at 10 CFR 490.2 (2002).

490 (2002). Section 507(g) sets forth a tentative schedule for implementing a program for covered fleets that would be enforced if DOE were to promulgate a private and local government AFV acquisition mandate.

In order to determine whether a fleet requirement program for private and local government fleets is “necessary” pursuant to section 507(e), DOE considered the number of fleets that likely would be covered by such a rule and the likely increase in the amount of replacement fuel that would be used by covered fleets as a result of the acquisition mandate. EPOA severely limits the universe of fleets that could be covered by a private and local government fleet rule. These limitations are described in the definitions, exceptions, and exemptions contained in the relevant sections of EPOA, as discussed below.

A “fleet” is defined in section 301(9) of EPOA as follows:

[T]he term “fleet” means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) Motor vehicles held for lease or rental to the general public;

(B) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(C) Motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) Law enforcement motor vehicles;

(E) Emergency motor vehicles;

(F) Motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) Nonroad vehicles, including farm and construction motor vehicles; or

(H) Motor vehicles which under normal operations are garaged at personal residences at night.

The key limitations in this definition include: (1) Only light duty vehicles (*i.e.*, vehicles less than 8,500 GVWR) are covered, and all medium-duty and heavy duty vehicles are excluded; (2) the vehicles must be part of a fleet of 20 vehicles used primarily in a large metropolitan area; (3) the vehicles must be centrally fueled or capable of being centrally fueled; (4) they must be owned or controlled by a local government or an entity that owns at least 50 such

vehicles; (5) fleets of rental vehicles are excluded; (6) law enforcement and emergency vehicles are excluded; and (7) vehicles garaged at personal residences are excluded.

Moreover, even if it is determined that a particular private or local government fleet constitutes a “fleet” under EPOA, the statute provides several exemptions. Section 507(i) allows a fleet to obtain an exemption from DOE for all or part of its fleet, from an otherwise applicable fleet mandate, on grounds of: (1) Non-availability of appropriate AFVs and alternative fuels; (2) non-availability of appropriate alternative fuels; and (3) with respect to local government entities, for a financial hardship.

EPOA furthermore contains a petition provision in section 507(n). That section provides that “[a]s part of the rule promulgated \* \* \* pursuant to subsection \* \* \* (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program \* \* \* nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet.” As a result, even to the extent a fleet constitutes a “fleet” under the narrow EPOA definition, and does not otherwise qualify for one of the statutory exemptions, it could petition for relief or suspension of a fleet mandate for any one of several different reasons.

Finally, AFV purchase requirements that DOE could impose under section 507(g) could only apply to the purchase of “light duty motor vehicles.” A light duty motor vehicle is defined as “a light duty truck or light duty vehicle \* \* \* having a gross vehicle weight rating of 8,500 pounds or less, before any after-market conversion to alternative fuel operation.” See 10 CFR 490.2 (2002). Therefore, medium- and heavy-duty vehicles would not be covered by any mandatory section 507 private and local government fleet program.

DOE originally estimated that about 2 million private and local government fleet vehicles would be covered under a fleet program, were one to be adopted, with AFV acquisitions eventually rising to about 320,000 annually. As discussed below in Section III, however, DOE’s original estimate of the number of fleet vehicles that would be covered under a private and local government fleet rule, and thus the number of annual AFV acquisitions resulting from such a rule, probably was far too high.

The limitations on the potential contribution of a private and local government fleet program to the replacement fuel goal are discussed in Section III. In brief, however, one DOE report issued in 1996 estimated that total fuel use from all fleets, including private and local government fleets, potentially covered by EPOA fleet programs to be approximately 1.2 percent of U.S. gasoline use. See *Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector, Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis* (DOE/PO-0042) (January 1996) [hereinafter *Technical Report 14*]. Similarly, a subsequent DOE report stated that, even if an AFV acquisition mandate for private and local government fleets was imposed, fleets covered by EPOA mandates would provide no more than about 1.5 percent replacement fuel use. These reports were issued before DOE had much experience with implementation and operation of EPOA Fleet programs. A more recent analysis (September 17, 2000), discussed in Section III of this notice of proposed rulemaking, indicated that replacement fuel use would increase only .25 percent if a private and local government rule was promulgated.

Section 504(c) of EPOA limits DOE’s authority to promote the use of replacement fuel. Specifically, DOE is precluded from promulgating rules that would mandate any of the following: “production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act.” Section 504(c) also precludes rules that would “mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.” Thus, DOE’s authority under EPOA to promote the use of replacement fuels is primarily limited to the following: implementation of the limited fleet programs found in sections 303, 501 and 507; research and development (R&D) activities with industry under Title XX, subtitle B; and voluntary promotional efforts, such as those fostered by the Clean Cities Program under sections 405, 409, and 505.

EPOA section 507 directs DOE to determine whether private and local government fleets should be required to acquire AFVs as they replace their existing stock of light-duty vehicles. Requirements for private and local government fleets, if adopted, would

likely be similar to those mandated by EPCa (42 U.S.C. 13251, 13257(o)) and already in place for State government and alternative fuel provider fleets. *See Alternative Transportation Fuel Program*, 10 CFR part 490 (2002).

EPCa authorizes DOE to conduct two separate rulemakings in order to determine whether to promulgate a private and local government fleet rule. First, section 507(b) allows for an early rulemaking, to be completed by December 15, 1996. As part of that rulemaking, section 507(a)(3) of EPCa required DOE to publish an Advance Notice of Proposed Rulemaking (ANOPR). If no final rule was promulgated by December 15, 1996, then sections 507(b)(3)(c), and (e) require a later rulemaking to determine whether vehicle acquisition requirements are "necessary" under the standards set forth in section 507(e) and should be imposed on private and local government fleets.

The relevant guidance for determining whether a private and local government fleet rule should be implemented is set forth in EPCa section 507(e). This section states that DOE shall promulgate a private and local government fleet requirement program only if it determines that such a program is "necessary." Section 507(e) further states that such a program is "necessary" if "the Secretary finds that" the replacement fuel goal, or a revised replacement fuel goal, "is not expected to be actually achieved by 2010 \* \* \* without such a fleet requirement program" and the goal is practicable and achievable "through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals."

Section 507(l) requires: "In carrying out this section, the Secretary shall take into consideration energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts, including impacts on workers and the impact on consumers (including users of the alternative fuel for purposes such as for residences, agriculture, process use and non-fuel purposes) and fleets, the availability of alternative fuels and alternative fueled vehicles, and other relevant factors." Section 507(e) is equally categorical in requiring DOE to promulgate a private and local fleet requirement program only upon a determination that such a program is "necessary" to achieve the replacement fuel goal, and section 507(e) sets forth the criteria DOE is to

apply in determining whether such a program is "necessary."

It is not clear that section 507(l) should be interpreted to apply to a rulemaking proceeding under section 507(e). Section 507(l) includes factors such as greenhouse gas and economic effects that have no bearing on a determination of "necessity" under section 507(e). Moreover, the section 507(l) factors seem geared to helping decide the proper contours of a fleet acquisition mandate once DOE has decided to promulgate such a program, rather than to the threshold determination of whether a program should be promulgated in the first place.

Regardless, it is not necessary in this proceeding to determine whether section 507(l) is properly interpreted as applying to a section 507(e) rulemaking proceeding. Even assuming that it does apply, consideration of the section 507(l) factors would not alter DOE's proposed determination that a private and local government fleet program is not "necessary" under section 507(e).

As explained below, DOE proposes to determine that because implementation of a private and local government fleet AFV acquisition mandate would result in no appreciable increase in the use of replacement fuel, such a program is not "necessary" under the standard set forth in section 507(e). None of the section 507(l) factors could change the outcome of the analysis because they would not change the conclusion that there would be no appreciable increase in the use of replacement fuels. Therefore, even if all of the section 507(l) factors pointed uniformly and strongly in favor of the implementation of a private and local government fleet mandate, and they do not, consideration of those factors could not and would not alter DOE's proposed determination that a fleet program is not "necessary" because such a mandate still would not appreciably increase the use of replacement fuel.

Section 507(m) of EPCa requires DOE to consult with the Secretary of Transportation (DOT) and Administrator of the Environmental Protection Agency (EPA) and other appropriate agencies in carrying out the requirements of section 507. DOE provided a pre-publication draft of today's notice of proposed rulemaking to DOT, EPA, and the Office of Management and Budget for their review.

#### B. Regulatory Time Line

On August 7, 1996, and as required by EPCa sections 507(a) and (b), DOE published in the **Federal Register** an ANOPR to evaluate progress toward achievement of the replacement fuel

goals in EPCa, identifying problems with achieving those goals, assess the adequacy and practicability of the goals, and consider actions needed to achieve the goals. *See* 61 FR 41031. DOE intended this notice to stimulate comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and AFVs. Three hearings were held to receive oral comments on the ANOPR. They were held on September 17, 1996, in Dallas, Texas; on September 25, 1996, in Sacramento, California; and on October 9, 1996, in Washington, DC. A total of 70 persons spoke at the three hearings, and 105 written comments were received by November 5, 1996.

On April 23, 1997, DOE published in the **Federal Register** a Notice of Termination stating that DOE would not promulgate regulations to implement AFV requirements for private and local government fleets pursuant to the early rulemaking schedule of EPCa section 507(a)(1). *See* 62 FR 19701.

On April 17, 1998, and for the purposes of EPCa sections 507(e), (g), and (k), DOE published in the **Federal Register** an ANOPR that asked for comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles. *See* 63 FR 19372. DOE held three hearings to receive oral comments on the ANOPR. They were held on May 20, 1998, in Los Angeles, California; on May 28, 1998, in Minneapolis, Minnesota; and on June 4, 1998, in Washington, DC. A total of 110 persons spoke at the three hearings, and/or submitted written comments.

On January 12, 2000, consistent with section 507(h) of EPCa (42 U.S.C. 13257(h)), DOE published in the **Federal Register** a notice, stating that it was extending by 90 days the January 1, 2000, deadline contained in section 507(e) in order to provide additional time for consultations with State and local officials, as required by Executive Order 13132. *See* 65 FR 1831. On July 20, 2000, DOE published in the **Federal Register** a notice stating that DOE was further delaying the section 507 rulemaking proceedings concerning private and local government fleets until after it had completed consultations with State and local government officials. *See* 65 FR 44987. DOE said that it was preserving the option of promulgating, at a later time, requirements for private and local government vehicle fleets. In the notice, DOE announced that it would hold three public workshops in order to discuss regulatory options and other

issues related to potential alternative fuel transportation requirements for private and local government fleets. In furtherance of its objective of consulting with affected State and local government officials, the first two workshops were open only to State and local officials. DOE held workshops on August 1, 2000 in Chicago, Illinois; on August 22, 2000 in Denver, Colorado; and on September 26, 2000 in Washington, DC.

On January 2, 2002, EarthJustice, on behalf of the Center for Biological Diversity, Bluewater Network, and Sierra Club, filed a lawsuit in the U.S. District Court for the Northern District of California which, in addition to seeking redress of other grievances, sought to compel DOE to "issue a proposed rule and final determination on the necessity of a private and municipal fleet program." On July 26, 2002, the Court granted plaintiffs' motion for summary judgment on the issue of whether DOE had missed the deadline set forth in EPCA section 507(e) for completing the rulemaking; as a result, the Court ordered a September 26, 2002, hearing to determine a timetable for completing the rulemaking. See *Center for Biological Diversity v. Abraham, et al.*, No. C 02-00027 (N.D. Calif., July 26, 2002) (order on motions for summary judgment). On September 27, 2002, the District Court ordered DOE to complete its proposed rulemaking by January 27, 2003 and its final rule by November 27, 2003. See *Center for Biological Diversity v. Abraham, et al.*, No. C 02-00027 (N.D. Calif., Sept. 27, 2002). The Court subsequently granted a 30-day extension (to February 26, 2003) of the deadline for DOE to complete work on this notice of proposed rulemaking.

As required by section 507 of EPCA and the order of the U.S. District Court for the Northern District of California, DOE has issued today's notice of proposed rulemaking which proposes to determine that DOE should not promulgate regulatory requirements for private and local government fleets.

### C. Program Background

Titles III, IV, and V of EPCA are focused on promoting the use of non-petroleum motor fuels, including replacement fuels and alternative fuels, in the transportation sector. EPCA focused on the transportation sector because of its almost complete reliance on petroleum as a fuel source and its significant contribution to petroleum demand. The transportation sector is nearly 97 percent dependent on oil as a fuel and is a major reason the U.S. is so dependent on imported oil. See Center

for Transportation Analysis, Oak Ridge National Laboratory, *Transportation Energy Data Book Edition 22*, p. 2-4 (Table 2.2) (ORNL 6967) (Sept. 2002) ([www.ornl.gov](http://www.ornl.gov)) [hereinafter *Energy Data Book*]. The transportation sector's demand for oil has continued to grow while other sectors have become less reliant on oil. In 1973, the U.S. transportation sector accounted for 52 percent of total U.S. petroleum use (9.05 of 17.31 million barrels per day (mmbd)). *Id.* at p. 1-18 (Table 1.13). In 2001, transportation sector demand for petroleum accounted for roughly 67 percent of total U.S. petroleum demand and exceeded domestic production by 5.2 mmbd equivalent of oil. *Id.* at pp. 1-16 (Table 1.12), 1-18 (Table 1.13).

The U.S. Energy Information Administration (EIA) has projected that transportation sector consumption of petroleum will rise to 19.22 mmbd by 2020. See EIA, *Annual Energy Outlook 2002*, p. 141 (Table A11) (DOE/EIA-0383(2002)) (December 2001) [hereinafter AEO 2002]. In 2020, passenger cars and light-duty trucks, which are the primary focus of Titles III-V of EPCA, are expected to account for 59 percent of the total energy used by the transportation sector. *Id.* at p. 136 (Table A7). In 2020, it is projected that U.S. oil production will provide only about half the total energy needed to fuel light-duty vehicles. *Id.* at pp. 141 (Table A11), 136 (Table A7).

As demand for transportation petroleum has grown, so too have U.S. petroleum imports. Dependence on imported petroleum was 41 percent when EPCA was enacted (6.96 mmbd), reached nearly 56 percent in 2001 (10.9 mmbd), and is expected to reach 63 percent by 2020 (16.6 mmbd). See *Energy Data Book* at p. 1-16 (Table 1.12), and AEO 2002 at p. 141 (Table A11). Of net U.S. imports, members of the Organization of Petroleum Exporting Countries (OPEC) currently supply almost 50 percent, with Persian Gulf states supplying almost half of this amount. See EIA, *Monthly Energy Review*, Table 1.8 (November 2002) (<http://www.eia.doe.gov/emeu/mer/txt/mer1-8>). OPEC members now account for approximately 40 percent of world oil production, and 52 percent of the petroleum export market. See EIA, *International Energy Outlook 2002* Tables D4, 11; <http://www.eia.doe.gov/oiaf/ieo/> [hereinafter *IEO 2002*]. According to the *IEO 2002* (Table 11), OPEC's share of worldwide crude oil exports is projected to increase to 64 percent by 2020. Much of the oil controlled by OPEC is concentrated in the Middle East, which contains nearly

two-thirds of the world's proven reserves. See *IEO 2002* Table 8.

Reducing total petroleum use and reducing petroleum imports decrease our economy's vulnerability to oil price shocks. Reducing dependence on oil imports from unstable regions enhances our energy security and can reduce payments to nations that may be hostile to U.S. interests. In 2000, the annual U.S. trade deficit in oil reached \$106 billion. See *AEO 2002* at p. 141 (Table A-11). Reducing the growth rate of oil use through conservation and use of non-petroleum motor fuels also relieves pressure on an already strained domestic refinery capacity, decreasing the likelihood of price volatility. Finally, conserving energy and using non-petroleum fuels, many of which are low in carbon intensity, help achieve the goal of decreasing greenhouse gas emissions.

Reductions in the U.S. demand for petroleum can significantly affect worldwide oil demand because the U.S. accounts for one-fourth of total world oil consumption. See *Energy Data Book* at 1-5 (Table 1.4). The consumption of motor fuels by U.S. light-duty vehicles in 2000 accounted for almost 10 percent of total world demand. As demand declines, prices for oil also are generally expected to decline. DOE has previously stated that a "reasonable rule of thumb is that a 1 percent decrease in U.S. petroleum demand will reduce world oil price by 0.5 percent, in the long-run." Short-term impacts are expected to be even greater. See *Energy Efficiency and Renewable Energy, DOE, Replacement Fuel and Alternative Fuel Vehicle—Technical and Policy Analysis* p. viii-ix (Dec. 1999—Amendments Sept. 2000); <http://www.ccities.doe.gov/pdfs/section506.pdf> [hereinafter *Section 506 Report*] (issued pursuant to EPCA section 506).

DOE manages a number of different programs that are aimed at reducing reliance on petroleum motor fuels. Part of this effort includes continued implementation of the programs contemplated under EPCA, including the fleet AFV acquisition programs for Federal, State government and fuel provider fleets (see below for discussion of EPCA Programs). These programs are primarily focused on the development and use of AFVs. DOE will continue efforts through its Clean Cities Program to encourage fleets to expand their use of alternative fuels and AFVs. These efforts involve primarily focusing on niche market fleets, but also include continued support for regulated fleets. DOE also plans to continue research programs involving replacement fuels, including biofuels, such as ethanol and

biodiesel, in order to make these fuels less costly and more widely used. The use of replacement fuels in fuel blends has a number of advantages that makes their increased use likely, including an ability to use the existing petroleum infrastructure, the ability to enable advanced engine control strategies, and relatively low costs compared with other immediate strategies.

Most importantly, the President and DOE have recently announced the creation of the FreedomCAR and Hydrogen Fuel Initiative, which is intended to make clean and affordable automotive energy a reality for all consumers. This initiative is focused on the introduction of hydrogen as a transportation fuel for the future and involves a number of different DOE programs. These efforts complement work already done in the area of hybrid electric drive systems and fuel cells, and look to advance these technologies beyond their existing state. DOE is working with the EPA, industry, academia, State Energy Offices, and DOE's national laboratories to bring the promise of low-cost, clean, and efficient hydrogen energy to the market. Although it will be many years before hydrogen vehicles and fuels are widely available, steps must be taken today in order to make hydrogen possible for the future. At the same time, DOE will continue to work with its partners through R&D programs to improve current technologies in order to make them cleaner, more economical and more fuel-efficient.

#### *D. Description of the Energy Policy Act's Alternative Fuel Transportation Programs*

##### **Alternative Fuel Provisions in the Energy Policy Act**

Titles III, IV, V, and VI of EPAct contain the basic provisions for various non-research alternative fuel-related programs, all of which are aimed at displacing motor vehicle petroleum consumption. (See 42 U.S.C. 13211 *et seq.*) Title III contains definitions of (1) alternative fuel; (2) AFV; and (3) covered fleet. Title III also sets forth requirements for Federal fleet acquisitions of AFVs, which began in fiscal year 1993.

Title IV authorizes, subject to the availability of appropriations, a financial incentive program for States, a public information program, and a program for certifying alternative fuel technicians. The public information program is intended to promote the use of AFVs and alternative fuels.

Title V specified percentages of light duty vehicles acquired by State

governments and alternative fuel providers that must be AFVs. The minimum acquisition requirements are phased-in, escalating from year to year until reaching a fixed percentage. Title V also gives DOE authority under specified conditions to impose by rule a similar mandate on private and local government fleets. Title V authorizes the allocation of credits to covered fleets that exceed their AFV acquisition requirements. These credits may be sold and used by other fleets that are subject to Title V vehicle acquisition mandates. It also contains investigative and enforcement authorities, including provisions for civil penalties and, in certain circumstances, criminal fines for noncompliance with the statutory mandates and implementing regulations. Finally, section 505 of Title V contains voluntary supply commitments that are covered by the Clean Cities Program.

Title VI of the Act confers on DOE a variety of authorities to promote, subject to the availability of appropriations, development and utilization of electric motor vehicles. Subtitle A provides for a commercial demonstration program for electric motor vehicles, and Subtitle B provides for an infrastructure and support systems development program.

##### **DOE Implementation of the Energy Policy Act**

Since 1992, DOE has taken a number of steps to implement EPAct's alternative fuel programs. DOE coordinates various aspects of the Federal fleets' efforts to comply with the vehicle acquisition requirements established under section 303. (42 U.S.C. 13212) DOE has promulgated and implemented regulations and guidance for alternative fuel providers and State government fleets, which are subject to the fleet provisions contained in sections 501 and 507(o), respectively. The implementation of the fleet regulations, in particular, has given DOE considerable experience in understanding the issues associated with fleet mandates.

DOE also has experience with implementing voluntary alternative fuel programs. The Clean Cities Program (Clean Cities) (sections 405, 409 and 505 of EPAct), is the primary means by which DOE promotes the use of alternative fuels. This program supports public and private partnerships that deploy AFVs and build supporting infrastructure. The Clean Cities Program has established the following relevant goals: (1) One million AFVs operating exclusively on alternative fuels by 2010; and, (2) one billion gasoline gallon

equivalents per year used in AFVs by 2010.

Unlike traditional command and control regulatory programs, Clean Cities takes a unique, voluntary approach to AFV development, working with coalitions of local stakeholders to help develop the AFV industry. The program thrives on strong local initiatives and a flexible approach to building alternative fuels markets, providing participants with options to address problems unique to their cities and fostering partnerships to help overcome them. There are currently more than 80 local Clean Cities organizations around the country. From local businesses and municipal governments to regional air quality organizations and national alternative fuel companies, more than 4,400 stakeholders have found the Clean Cities to be an effective route to building local alternative fuels markets.

Many Clean Cities organizations have focused their efforts on marketing to niche markets. Niche market fleets offer the best opportunities for overcoming the barriers that often limit alternative fuel use. These barriers include limited refueling infrastructure, higher acquisition costs, and lower operational range for vehicles. High-mileage, centrally-fueled fleets are a good example of a niche market. High-mileage fleets consume larger quantities of fuel, so over time, fleet managers can benefit from the cost savings associated with alternative fuels that cost less than conventional fuels. Low-mileage, high-fuel-use vehicles—those that must often wait, idling, or those with repeated starts and stops, such as airplane tugs and airline baggage carts—are another niche market. Predictable routes and centralized refueling stations also facilitate scheduling and allow for overnight or off-hour refueling, leaving more time for scheduled stops during the workday. Considering these factors, alternative fuels in many niche applications make sense and can be economical today. With the many niche markets in communities across the country—taxis, delivery fleets, shuttle service and transit bus fleets, airport ground fleets, school bus fleets, and national park vehicles—market penetration for alternative fuels and vehicles is viable and can have an impact on alternative fuel growth.

Additional details on the Clean Cities Program may be found on the world wide web at [www.ccities.doe.gov](http://www.ccities.doe.gov). Details on DOE's existing fleet regulations may be found on the World Wide Web at <http://www.ott.doe.gov/epact/>.

## Status of Alternative Fuel and Alternative Fueled Vehicle Markets

According to the EIA, the number of AFVs on the road has more than doubled since EPAct's passage in 1992. See *Energy Data Book* at 9-3 (Table 9.1), and EIA, *Alternatives to Traditional Transportation Fuels 2000* Table 1 (Sept. 2002) [hereinafter *Transportation Fuels 2000*] ([www.eia.doe.gov/fuelalternate.html](http://www.eia.doe.gov/fuelalternate.html)). As of 2002, EIA estimates that AFVs number slightly more than a half million vehicles, comprising a small fraction of the total U.S. vehicle stock. *Id.* Of the forecasted 2002 total, approximately 281,000 will be fueled by liquefied petroleum gas (propane); 126,000 will be fueled by compressed natural gas; 5,900 will be fueled by M85 (a blend of 85 percent methanol and 15 percent gasoline); 82,500 will be fueled by E85 (a blend of 85 percent ethanol and 15 percent gasoline); and almost 20,000 will be fueled by electricity. The remaining quantity of AFVs consists of a very small number of vehicles fueled by liquefied natural gas, M100 (100 percent methanol), and E100 (100 percent ethanol). *Id.* DOE estimates that approximately 20,000–25,000 new AFVs are acquired annually as a result of the Federal fleet requirements under section 303 of EPAct and the State and Alternative Fuel Provider Fleet Programs found in sections 501 and 507(o).

In addition to the vehicles described above, EIA estimates that by 2000 there were approximately 2.6 million flexible fueled vehicles (FFVs) on U.S. roads capable of operating on ethanol blends of E85. *Transportation Fuels 2000* at Table 1. An FFV is "any motor vehicle engineered and designed to be operated on any mixture of two or more different fuels." 10 CFR 490.2. The number of FFVs is expected to grow significantly in future years as automakers continue to sell hundreds of thousands of these vehicles each year. EIA does not count most of these vehicles in its AFV figures above since these vehicles include cars and light trucks owned by non-fleet owners, who for the most part are not expected at this time to use ethanol in their vehicles. These vehicles, however, could use ethanol if the infrastructure becomes more widely available and fuel supplies are offered at a competitive price.

When EPAct was enacted in 1992, EIA estimated that total alternative fuel and replacement fuel use accounted for approximately 1.6 percent of total motor fuel consumption. This figure rose quickly to 2.2 percent in 1993 largely as a result of requirements under the Clean

Air Act Amendments of 1990, which required the use of oxygenated and reformulated fuels. EIA has projected that, for 2002, the annual consumption of alternative fuels in alternative fuel vehicles will reach the equivalent of approximately 294 million gasoline gallons. Factored together with the use of replacement fuels such as ethanol and MTBE, the total amount of replacement fuel and alternative fuel consumption will displace the equivalent of approximately 4 billion gallons of gasoline. While encouraging, this figure represents only a small part (2.8 percent) of total 2002 on-road motor vehicle fuel consumption. Thus, despite the efforts of the past decade and significant improvements in the state of alternative fuel technology, alternative and replacement fuel use has grown relatively little.

## II. Previous Opportunities for Public Comment

Pursuant to the rulemaking process set out in sections 507(c)–(g) of EPAct, DOE issued an advanced notice of proposed rulemaking (ANOPR) and held a series of stakeholder workshops to discuss various options open to it for implementing a private and local government fleet program and in general how to encourage increased use of replacement fuel. Commenters also were asked to provide input on the replacement fuel goals contained in EPAct. The comments and public statements DOE received have informed the determination proposed today. The sections below describe the process used to solicit information, the different proposals made, and the input received. DOE notes that neither EarthJustice nor the other entities it represented in the lawsuit in *Center for Biological Diversity v. Abraham* filed written comments or provided testimony in response to the opportunities for public comment described below.

### A. 1998 Advanced Notice of Proposed Rulemaking

On April 17, 1998, DOE published in the **Federal Register** an ANOPR stating that DOE was beginning its process for determining whether to promulgate a rule imposing possible AFV acquisition requirements on private and local government fleets. See 63 FR 19372. Accordingly, DOE requested comments on a number of issues potentially relating to such a rule, arising from section 507(g) of EPAct, as well as relating to possible alternative fuel requirements for urban transit buses under section 507(k). In May and June of 1998, DOE held three public hearings in Minneapolis, MN; Los Angeles, CA;

and Washington, DC. More than 110 interested parties responded by providing written and verbal comments.

The ANOPR requested comments on 23 questions within three broad areas: replacement fuel goals, fleet requirements, and urban transit buses. Many of the comments expressed during the public workshops included common themes and overlap among these three areas. Information related to the ANOPR and this rulemaking, in general, is located on the World Wide Web at [http://www.ott.doe.gov/epact/private\\_fleets.shtml](http://www.ott.doe.gov/epact/private_fleets.shtml).

### Discussion of Replacement Fuel Goals and Fleet Requirements

More than 40 commenters addressed the question whether the goal of replacing 30 percent of the Nation's motor fuel by 2010 is achievable. Commenters also identified likely problems in achieving this goal. Less than half of the commenters who explicitly addressed this question regarded the goal as unachievable. Many of the commenters considered the goal unachievable under the then-present economic conditions, and many offered suggestions as to what changes would be required to make the goal feasible. Commenters were in general agreement that the lack of alternative fuel infrastructure, low petroleum fuel prices, and various limitations on AFV availability were key barriers to achievement of EPAct's 30 percent petroleum replacement goal and implementation of any new fleet rules. Many commenters cited the lack of an alternative fuel infrastructure as a significant barrier. One commenter said public access to most existing natural gas refueling sites in his area is either restricted or prohibited. Another commenter said supplies of alternative fuels themselves were inadequate at present.

Two commenters pointed to the low prices of petroleum-derived fuels as an impediment to alternative fuel implementation. One commenter said that low petroleum prices implied that AFV fleet operators might never see a return on their investment. A related comment, noted that installation of an alternative fuel infrastructure could be a financial burden for small and independent fuel retailers and could be unfair to them.

The cost of AFVs and the lack of selection among AFVs were mentioned by a number of commenters. Several commenters also mentioned that it was difficult to lease AFVs or acquire certified conversions. Two commenters said incremental costs of AFVs could

inhibit widespread acceptance of the vehicles and technology.

Five comments identified the resale or residual value of AFVs as a barrier to fleets' acceptance of AFVs. Two of these comments urged government action to address this problem. One commenter stated that government purchase of AFVs at the end of their lease life or a resale price guarantee by the government was needed. The other said that government should establish a resale market (or surrogate), or create a residual value insurance pool for alternative fueled vehicles, analogous to resale value insurance that can be obtained for fleet vehicles.

Commenters who opposed adoption of a private and local government fleet mandate questioned the benefits of or the justification for such a mandate, and suggested it would foster non-compliance and limit participation in voluntary programs. Several commenters questioned DOE's authority to promulgate a private and local government fleet rule. These comments argued that DOE had not yet demonstrated that a private and local government fleet rule was "necessary" or that meeting the EPA's fuel replacement goal through a fleet rule was economically achievable. One commenter said that DOE had not yet performed the cost/benefit analysis called for in section 507(l) of EPA's Act. Commenters also cited the draft *Section 506 Report* (section III below) which indicated that a private and local government fleet mandate would result in only 1.5 percent fuel displacement.

Several commenters also asserted that much of the additional alternative fuel used under a fleet program would actually be imported, and hence promoting the use of such fuel would do little to meet the section 502(b)(2) provision that at least half of the replacement fuel used to meet EPA's replacement fuel goals must consist of "domestic fuels." They also believed that there was not currently a match between the AFVs available and vehicles which could meet the normal business requirements of the fleets that would be subject to the acquisition mandate. These commenters, and a few others stated the 30 percent replacement fuel goal set forth in EPA's Act was arbitrary, and that any modified goal would be equally arbitrary. These commenters stated that DOE should concentrate on accelerating public information programs and increasing participation in voluntary programs, like Clean Cities and Clean Airports. In contrast, two commenters argued in favor of mandates, with one saying failure to impose them would indicate

a lack of confidence in the alternative fuels industry.

DOE's second question solicited input on what level of replacement fuel use is actually achievable, if the goal originally specified in EPA's Act is not feasible or achievable. Eight commenters responded to this question; only one provided an alternative numerical goal.

DOE's third question asked for information on the practicality of EPA's replacement fuel goals and whether they should be modified. In response, one commenter criticized the fundamental assumption that replacement fuel goals are needed. Several commenters said that some AFVs are not necessarily cleaner than gasoline-fueled vehicles and that current AFV models are more expensive to operate than their conventional fueled counterparts. Commenters urged DOE to consider the effects of current AFV programs on fleet economics, on progress toward reaching EPA's replacement fuel goals, and to consider alternatives to mandates. Another commenter questioned the reasonableness of DOE's projections of the number of AFVs that would be necessary in the future to achieve the replacement fuel goals.

DOE's fourth question asked commenters to describe the general outline, structure and implementation of a possible program that focused on fuel use instead of simply on vehicle acquisitions. Many commenters urged the adoption of an incentives-based program instead of new mandates. Other commenters, however, supported a new mandate. Nearly all commenters, including those opposed to mandates, thought that focusing on fuel use rather than vehicle acquisitions was a good idea. A number of commenters recommended replacement fuel programs that were based on or emphasized specific alternative fuels, even though DOE historically and uniformly has been of the view that it should remain fuel neutral in implementing EPA's regulatory programs.

Some commenters said that DOE should focus its efforts on programs already in place, especially the Clean Cities and Clean Airports Programs. One commenter thought that these programs, combined with the mandatory fleet programs already in place, constituted a sufficient replacement fuel program.

DOE's next two questions concerned what other measures could be taken, in addition to or instead of an acquisition mandate, to further the achievement of the replacement fuel goals, and what types of incentives should be offered, what form should they take, and whom

should they benefit. These questions drew the largest response from commenters. The overwhelming majority of commenters recommended the adoption of financial and non-financial incentives. There was an almost equal split between commenters that advocated measures other than mandates, and commenters that advocated measures in addition to mandates. One commenter, who advocated incentives in addition to mandates, said the adoption of incentives should precede mandates. Another commenter, who called for incentives instead of mandates, said that mandates should be imposed only if the adoption of incentives fails to elicit adoption of alternative fuels. Two commenters opposed incentives; one said they were inappropriate for uneconomic fuels and the other predicted they would not further significant petroleum replacement.

A common theme among comments by State and local government representatives was that incentives also should be available to them. In addition, one commenter suggested linking incentives to actual alternative fuel use. Numerous commenters discussed how incentives could be funded. Commenters suggested a 1-cent-per-gallon tax on gasoline, as well as a tax, or import tariff, on foreign petroleum. One commenter called for additional taxes to be placed on all fuels produced from imported petroleum. Another commenter suggested that incentives be funded through the Transportation Trust Fund.

Many commenters called for tax incentives, including credits for the acquisition of vehicles, fueling infrastructure investments, and alternative fuel use. One commenter noted that if tax incentives are adopted, they should be available for a sufficient period, with a specified phase-out date to facilitate business planning. In addition to tax credits, two commenters advocated direct grants for entities that could not take advantage of tax credits.

Several commenters recommended of non-financial incentives, including granting AFVs access to high-occupancy vehicle (HOV) lanes or their own dedicated travel lanes, parking and toll preferences, relaxed vehicle inspection standards, lower vehicle registration fees, and lower sales taxes. DOE notes that while some such incentives already exist, additional incentives, including new tax credits, would either require new legislation from Congress or legislation or regulatory actions at the State and local government levels.

Several comments suggested regulatory intervention in the vehicle



and fuel markets. One called for a requirement that conventional motor fuel station operators install alternative fuel storage and dispensing systems and sell alternative fuel(s) as a minimum of 10 percent of their annual sales by 2000, and a minimum of 30 percent by 2010. All of these suggestions call for actions that are outside of DOE's authority or are expressly prohibited by EPCA.

Most commenters wanted fleets and other AFV owners and operators to be the primary targets of incentives. One commenter said that incentives should be targeted to small businesses and users, and not to large Original Equipment Manufacturers (OEMs). A few commenters thought that fuel providers should qualify for financial incentives as a way to encourage infrastructure development.

Commenters favoring a program to encourage fuel use offered suggestions on how such a program could work. The general aim of these suggestions was to allow covered and potentially covered fleet operators greater flexibility in meeting requirements. Suggestions for such a program included providing acquisition credits for medium- and heavy-duty vehicles, extra credits for electric and dedicated alternative fueled vehicles, providing credits to non-covered fleets, and providing credits for alternative fuel use.

Commenters voiced considerable support for tying credits (and other incentives) to the amount of alternative fuel(s) actually consumed by the vehicles. Several commenters suggested that emissions trading credits be granted to AFV operators who exceeded alternative fuel use requirements.

DOE asked for guidance on how to factor in changes in oil price and availability into the decision-making process. Relatively few commenters addressed this question. Two pointed to a General Accounting Office study that estimated the benefits to the U.S. of using low-cost imported petroleum to be in the hundreds of billions of dollars, and to outweigh the benefits of alternative fuels. One commenter said that alternative fuel mandates, while they might reduce petroleum imports, could increase imports of other fuels. Two commenters suggested DOE consider the national defense and security costs of the country's current petroleum imports, one of them calling for excise taxes on petroleum that reflect its "costs to society."

There were 15 responses to DOE's question about measures to encourage use of alternative fuels, rather than conventional fuels, in bi-fuel and FFVs. Three commenters recommended DOE simply require alternative fuel use in

FFVs. One commenter argued that alternative fuel use in bi-fuel vehicles and FFVs at least 50 percent of the time should be sufficient to qualify these vehicles for EPCA compliance, while another recommended DOE establish a guideline that an AFV must operate at least 75 percent of the time on alternative fuel if the vehicle is to count toward an operator's compliance with EPCA.

One commenter suggested that DOE add biodiesel and reformulated gasoline (RFG) to the list of alternative fuels specified in the EPCA. In the Final Rule for the Alternative Fuel Transportation Program promulgated on March 14, 1996, DOE added neat (or 100 percent) biodiesel to the definition of "alternative fuel." Additionally, after enactment of section 7 of the Energy Conservation Reauthorization Act of 1998 (ECRA) (Pub. L. 105-388) which allowed covered fleets to earn acquisition credits by using biodiesel blends in medium- and heavy-duty vehicles, DOE issued regulations allowing credit in these circumstances as well. See 64 FR 27169 (May 19, 1999). However, DOE has consistently stated that it cannot add RFG to the definition of "alternative fuel" because RFG is more than 80 percent petroleum, and therefore is not "substantially not petroleum" as required by EPCA section 301(2). See 61 FR 10622, 10630 (March 14, 1996) (notice of final rulemaking establishing 10 CFR Part 490).

The final replacement fuel question on which DOE sought comments was how to estimate the impacts of replacement fuel. One commenter predicted that achievement of the 30 percent replacement fuel goal would create supply and price problems for current propane users in the agricultural, residential, and industrial sectors. This commenter predicted price increases of several hundred percent, and cited a DOE report that projected vehicle fuel demand for propane could go from 35,000 barrels per day (bbl/day) to 1.7 million bbl/day, and imports could increase from 200,000 bbl/day to 1.7 million bbl/day. General Accounting Office report GAO/RCED-98-260, entitled *Energy Policy Act: Including Propane as an Alternative Motor Fuel Will Have Little Impact on Propane Market*, addressed this concern. The report asserted that EPCA's effects on the supply and price of propane would be minimal and the increase in overall price of propane, attributable to EPCA, would be negligible. It also stated that EPCA would have little effect on existing consumers of propane because the price increases will be so small.

In the area of fleet requirements, DOE asked whether the AFV acquisition schedule in section 507(g) of EPCA should be adhered to, and if not, what alternative schedule should be used. Section 507(g) requires that if DOE promulgates an AFV acquisition mandate for private and local government fleets, annually escalating percentages of the light duty vehicles acquired by the covered fleets must be AFVs, beginning with 20 percent in model year 2002 and rising to 70 percent in model year 2005 and thereafter, although this section also gives DOE authority to change these years and percentages. Eight commenters spoke in favor of retaining the section 507(g) schedule, although one advised making the schedule applicable only to local government fleets and adopting incentives for these fleets. Several commenters supported adoption of a new mandate for local government fleets, including transit agencies, but not for private fleets. Six commenters opposed the schedule in section 507(g). Some commenters opposed any mandate, while others recommended a longer phase-in schedule.

DOE received numerous comments in response to its question regarding what programs other than the fleet requirement program would maximize market penetration of alternative fuels and AFVs, and what market penetration these programs would induce. Many of these comments simply reiterated the call for incentives of various types. A number of commenters, however, said that a concerted effort to expand existing infrastructure would enable fleets to expand their use of AFVs. Though not responsive to the question, a number of commenters suggested expanding the existing fleet programs to cover medium- and heavy-duty vehicles. A few commenters also thought that the statutory geographical limitations on fleet programs should be removed.

A number of commenters cited the Clean Cities Program as an effective means of expanding AFV use. Some called for the program to be expanded, in terms of the number of its participants, the areas it covers, and in funding. Commenters also recommended that Clean Cities coordinators receive training in how to seek Department of Transportation Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds.

A number of commenters urged continued Federal leadership in establishing the use of alternative fuels and alternative fueled vehicles. These commenters indicated that the Federal



Government must do a better job of meeting its own AFV acquisition requirements and using alternative fuels in its vehicles. DOE has worked closely with all the Federal agencies to maximize acquisitions of alternative fueled vehicles and increase the use of alternative fuels. DOE participated actively in the development of Executive Order 13149, which strengthens the Federal Government's commitment to using AFVs and gives DOE a greater role in assisting Federal agencies compliance with EPA's AFV acquisition requirements and report on their acquisitions.

DOE's final question about fleet requirements asked how DOE should weigh the factors in section 507(l) of EPA's Act when deciding whether to promulgate a private and local government fleet program. Nine responses explicitly addressed this question. There was no clear consensus that DOE should accord the greatest weight to any particular factor. Four commenters mentioned economic factors: the impacts on fleets, workers, consumers (particularly non-transportation propane consumers); cost burdens the rule would impose on local governments; and fuel market impacts. One commenter said Congress did not intend that a fleet mandate be imposed if it would harm the economic well-being of businesses, workers, or consumers. This commenter also stated that the evidence suggests the costs of such a mandate would greatly exceed its benefits. Three commenters mentioned AFV availability as a concern that should be considered before DOE proposes any fleet AFV acquisition program. Another commenter said the unavailability of suitable vehicles had been regarded by Congress as sufficient reason to defer imposition of fleet mandates.

A commenter raised the issue of environmental benefits of AFVs, saying Congress had not intended for acquisition mandates to be imposed on fleets if AFVs did not confer environmental benefits. The same commenter noted earlier that AFVs at one time had been automatically assumed to have lower environmental impacts than petroleum-fueled vehicles, but that the evidence had since showed this assumption to be false. This commenter also urged DOE to weigh vehicle safety and greenhouse gases in its consideration of a possible private and local government fleet program.

#### Discussion of Urban Transit Buses

In the ANOPR, DOE asked for input on how it should determine if the inclusion of urban transit buses in the

proposed rule would help meet the replacement fuel goals. Virtually all the commenters responding to this question took it as soliciting their opinion on whether an urban transit bus fleet rule should be promulgated. Eighteen commenters urged DOE to promulgate a mandate that urban transit bus operators acquire alternative fuel buses. A number of these comments suggested that this mandate could be adopted independent of a private fleet mandate. There was general agreement among supporters of a transit fleet mandate that transit buses were a good fit for alternative fuels.

Nine commenters, six of them urban transit bus operators, opposed the imposition of an urban transit bus AFV mandate. Two of them described such a mandate as "unfunded." One argued that imposition of such a requirement would be overly ambitious, financially burdensome, and could decrease urban transit bus ridership. Several commenters stated that requiring the acquisition of more expensive alternative fueled buses could lead to reduced ridership if transit agencies had to raise fares to pay for the buses. One commenter said transit riders already help reduce petroleum imports by not driving their own cars, and that DOE should recognize that the petroleum fuel consumed by urban transit buses is going to the "highest use." Two commenters pointed out that an increasingly large percentage of new urban transit bus purchases are alternative fueled, and that alternative fuels have made impressive inroads in the urban transit bus sector. Two other commenters said these gains have been made without mandates, and voluntary adoption of alternative fueled urban transit buses should continue, as local funding and circumstances permit.

DOE asked how it should quantify the impact on public transit properties of requiring them to acquire alternative fueled buses. Thirteen of the 15 respondents to this question spoke directly or indirectly to the issue of economics. All said that it would be a financial burden because of the higher cost of alternative fuel buses, the cost of installing the infrastructure (or the operational costs of off-site refueling), the cost of training maintenance personnel, and the costs (in some cases) of retrofitting large facilities to accommodate AFVs. One also pointed out that increasing (conventional) diesel engine efficiency had permitted a reduction in transit bus fuel consumption over the past 10 years.

DOE asked for comment on whether an urban transit bus fleet mandate, if imposed, should apply to public and private urban transit bus operators, or

only to public operators. By a substantial margin (nine to one), commenters favored applying the requirement equally to public and private operators.

Two commenters commented on ways to address offset the economic penalties of owning and operating alternative fueled urban transit buses. One favored using a life-cycle cost approach, rather than emphasizing the first cost of vehicles and infrastructure. The other noted that CMAQ funds are available from the Department of Transportation and that other Federal funds are available to help finance alternative fueled bus purchases. This commenter urged DOE to work with the Federal Transit Administration (FTA) and the Federal Highway Administration to secure the maximum available funding for urban transit bus projects.

In response to its question concerning what implementation schedule, if any, should be used for transit bus fleets, DOE received three comments advocating use of the schedule that is described in section 507(g) of EPA's Act, described above. One commenter called for an emphasis on fuel replacement, but offered no specific advice on how this objective should be accomplished. Eight comments suggested other schedules, mostly longer phase-in periods.

DOE's final question about a potential AFV mandate for urban transit buses concerned the types of exemptions and exclusions it should provide transit agencies. Three transit properties called for exemption of all urban transit bus fleets irrespective of size. One commenter said participation of urban transit bus fleets should be based not on acquisition numbers, but on annual fuel use. Three other transit properties said exemptions should be based on the cost-effectiveness and/or the technical applicability of alternative fueled urban transit bus operation for the fleet in question. Another commenter said that fleets with fewer than 100 buses should be exempted if an urban transit bus fleet rule were imposed.

#### B. Stakeholder Meetings—Fall 1998

In the Fall of 1998, DOE held a series of informal meetings with stakeholder groups to supplement the formal hearings held in conjunction with the ANOPR several months earlier. These meetings were held because DOE was interested in expanding the scope of regulatory options that it was considering and in gauging stakeholder reactions. At these meetings, DOE discussed the issues affecting the development of the NOPR, including DOE's processes, requirements, and

authority. In addition to giving them a forum to respond to the options presented, DOE offered stakeholders an opportunity to identify key barriers to increased use of alternative fuels and to suggest possible solutions. Invitees included fuel providers, fleets (both public and private), regulatory agencies, technology research organizations, vehicle fuel systems providers, consulting firms, vehicle manufacturers, and related associations and coalitions.

In connection with new stakeholder workshops, DOE developed several new potential regulatory options. These alternatives were raised as a way of soliciting comments on whether DOE could encourage or require fuel replacement in addition to or instead of requiring fleets to acquire AFVs. DOE developed these potential options because of its concern that simply adopting the fleet mandate authorized by section 507(e) and (g) would not result in a significant increase in alternative fuel use or petroleum replacement. This focus on fuel use was also a potential way of responding to sentiments expressed in comments DOE received during ANOPR process.

DOE developed these new options, in part, in response to the direction in EPCA section 507(a)(3) and 507(c) for DOE to evaluate "all actions needed to achieve [the replacement fuel] goals." This directive obviously did not limit the scope of DOE's analysis to only regulatory actions and policies that were within DOE's current legal authority to promulgate. As a result, DOE concluded that it should ask for comments on a number of different options without regard to whether those options or the other options commenters might offer were within DOE's statutory authority under EPCA.

DOE's concern about fuel use arose in part from its experience in implementing the mandate for State government fleets under section 507(o). Based on this experience, DOE believed that many State government fleets use alternative fuels a relatively small percentage of the time in their alternative fueled vehicles. With no requirement to use alternative fuels, many State fleets are acquiring FFVs and running them on gasoline. Many fleets prefer these vehicles because they have little or no incremental cost. At the same time, State fleets lack inducements to actually fuel their FFVs with alternative fuel. Reasons for this vary. For example, the existing infrastructure for ethanol is very localized and limited. Many States do not have any locations that provide ethanol. The ethanol industry is focusing its efforts on having ethanol blended into gasoline and RFG,

and for the most part, has not focused on developing a widespread fueling infrastructure for E85. Additionally, ethanol, in general, costs more at the pump than gasoline. See *Alternative Fuel Price Report* ([www.afdc.doe.gov/documents/pricereport/pricereports.html](http://www.afdc.doe.gov/documents/pricereport/pricereports.html)).

A few State fleets make substantial use of alternative fuel. These States tend to be those where natural gas and/or propane is abundant, or where the Governor has publicly committed to using alternative fuels, such as California, New York, Texas and West Virginia. These States also tend to acquire dedicated alternative fueled vehicles as a larger portion of their new acquisitions.

Because DOE's experience had shown that fleets will opt to fuel AFVs with gasoline or diesel rather than alternative fuels, DOE sought to identify ways to require or encourage local government and private fleets to use alternative fuel. DOE turned to the public comments it received in response to the ANOPR and on the proposed rule for the State and Alternative Fuel Provider Fleet Program. Commenters suggested a variety of ideas to DOE in these forums, including that DOE should mandate fuel use or provide credits for alternative fuel use. At the same time, a number of commenters stated that DOE does not have the authority to require fuel use. Many of the comments in favor of a fuel use requirement suggested that fleets should receive credits based on the amount of alternative fuel their vehicles used and that medium- and heavy-duty vehicles, because they use more fuel than light-duty vehicles, should receive multiple credits. Some commenters suggested that dedicated vehicles be awarded multiple credits or that dual-fueled vehicles should only receive half a credit.

No efforts were made during the meetings to achieve consensus. Meetings ranged in size from approximately 15 to 40 representatives in attendance, and included a reasonably representative cross-section of stakeholders. DOE identified representatives from stakeholder groups and invited them to attend the stakeholder meetings. In some cases, an individual representing multiple stakeholders was invited (such as from an association), while in other cases, an individual representing a particular interest was invited (such as from a single company or government organization).

The schedule for the meetings was as follows:

October 26, 1998—Private Fleets, Transit Bus Operators, and Medium-/Heavy-Duty Fleets  
 October 27, 1998—Local and State Government Fleets  
 October 28, 1998—Electric Utilities and Fleets  
 October 30, 1998—Liquid Fuel Providers  
 November 2, 1998—Natural Gas Fuel Providers, Propane Fuel Providers and Fleets

The meetings were held in Washington, DC. In addition, DOE held several informal meetings or discussions with automobile manufacturers outside of the stakeholder meetings, with the same purposes and information as the stakeholder meetings identified above. These consisted of the following:

October 6, 1998—American Honda Motor Company  
 October 29, 1998—Toyota Motor Corporation  
 November 9, 1998—Ford Motor Company  
 November 10, 1998—Chrysler Corporation  
 November 10, 1998—General Motors Corporation

DOE began each meeting by discussing the replacement fuel goals, the authority to modify these goals, the possible regulatory options for a fleet requirement rule, and the additional statutory authority related to urban transit buses. DOE also presented four regulatory options that were under consideration at the time. These options were:

Option #1—Proposing a rule based solely upon the AFV acquisition requirements identified within section 507(g);

Option #2—Including all elements of Option #1, but adding a requirement that the alternative fueled vehicles must operate on alternative fuels wherever available;

Option #3—Including all elements of Option #1, but adding a provision for the allocation of credits for actual use of replacement fuel; and

Option #4—Proposing a replacement fuel program, focused on reducing fleet petroleum consumption by requiring fleets to reduce their light-duty fleet petroleum consumption through the use of replacement fuel.

Most of the discussions at the stakeholder workshops focused on the specific approaches to developing a fleet rule. Some of the discussions also concerned to the replacement fuel goals.

Many of the comments made during these meetings were similar to those made during the ANOPR process. Private fleets cited barriers to increased alternative fuel use, including the incremental price of many AFVs, the lack of sufficient infrastructure, increased operational costs of AFVs,

and the lack of established resale value for AFVs. Several commenters suggested ways of overcoming these barriers. Private fleets suggested providing incentives not only for the development of alternative fuels infrastructure, but for maintenance and training as well. Private fleets also favored imposing a moratorium on taxes of AFVs and/or alternative fuels.

Private fleets also suggested that DOE investigate the possibility of making certain requirements conditional upon market events. For example, if AFV or alternative fuel prices came down to a certain level or infrastructure developed to a certain point, AFV acquisitions or alternative fuel use could then be required.

Transit bus operators cautioned that their cost-effectiveness is closely tied to Federal Transit Authority funding policies. They also cautioned that anything that increases fares discourages overall ridership. For this reason, among others, transit bus operators opposed any mandates. Some stakeholders expressed support for including the transit bus industry in a private and local government fleet mandate. These stakeholders indicated that current new orders for alternative fuel transit buses are increasing. Some also indicated that transit buses are a very successful market niche for alternative fuels.

Medium- and heavy-duty fleet stakeholders favored establishing non-financial incentives at the local level and providing them to State and local government fleets alike. One suggested providing special curb access (non-ticketing zones) to alternative fuel delivery vehicles. These stakeholders generally believed that medium- and heavy-duty vehicles are a good fit for alternative fuel use, often better than light-duty vehicles. These stakeholders stated, however, that DOE should not require the acquisition of medium- and heavy-duty AFVs, but instead should provide credits for the use of alternative fuels by medium- and heavy-duty vehicles.

Local government attendees identified a number of barriers to alternative fuel use. They said they have trouble justifying incremental purchase and higher operating costs for AFVs, especially for governments with severe fiscal constraints. Conversions were generally viewed as a cost-effective alternative to OEM product offerings. In some cases, a mandate, if too costly, might impede some local government agencies from fully completing their core missions. Several local government representatives also said that the Federal Government must lead first,

before local governments can be expected to follow.

Local governments offered a number of proposals to address barriers. While they saw financial incentives as critical to increasing alternative fuel use, a number of fleet managers also indicated their support for non-financial incentives. These included giving AFVs the right to use HOV lanes with and "green" parking spaces where AFVs would have receive preferential parking locations, possibly at reduced or no cost). Commenters also said that because heavy-duty vehicles use significantly more fuel than light-duty vehicles, their use should be strongly encouraged, and large numbers of credits should be provided for these vehicles (such as based upon a comparison of annual fuel use).

State representatives provided information both in their capacity as government agencies interested in pursuing certain societal goals (such as increased energy security or improved environment) and in their capacity as the owners of fleets operating under the current AFV acquisition requirements. State fleets asserted that there needs to be a more explicit tie between energy and environment among the Federal agencies. For example, States (and others) would like to receive EPA credit for alternative fuels dispensed from stations they build. They pointed out that States could make use of alternative fuels and AFVs by private entities a condition of receiving State contracts. State fleets already regulated under DOE's existing regulations were interested in finding out if other AFV-related programs (such as those discussed above) could be available to them.

Electric utilities indicated that they would like to receive credits for putting infrastructure in place. They also expressed an interest in receiving credits for R&D commitments. Some of these commenters expressed the belief that many organizations (including the electric utilities) are acquiring vehicles slightly larger than 8500 GVWR limit for light duty vehicles so as to avoid acquisition requirements, and that these practices are causing greater petroleum use by these fleets. Others, however, thought that AFV acquisition requirements should be extended to medium- and heavy-duty vehicles, to provide manufacturers with a greater incentive to make these vehicles available as alternative fueled vehicles. They also said that increased competition in the electric industry is forcing many utilities to re-evaluate their electric vehicle (EV) programs, since they typically have not been cost-

effective. This means that not only fleet purchases, but deployment, demonstration, R&D, infrastructure, and fleet assistance programs are coming under greater scrutiny.

Liquid alternative fuel providers and petroleum providers seemed to support an approach similar to option number 4, the replacement fuel/reduced fuel consumption approach. Overall, the oil industry asserted that there is little value in achieving a replacement fuel goal. These providers stated that there is a disconnect between projected or desired demand and actual demand for alternative fuels, which is seriously hindering development of the infrastructure. Fuel suppliers would also like to see some sort of credit for providing alternative fuel.

The natural gas and propane providers comprised the largest stakeholder group and raised many issues and concerns. These providers said option 4 provided the most flexible method for fleets to comply with a fleet rule, while also avoiding the situation of having dual-fueled vehicles not operating on alternative fuels. At the same time, several organizations said that an AFV acquisition program approach should not be completely abandoned.

Many attendees asserted that including medium- and heavy-duty vehicles within an AFV acquisition program would be advisable, for several reasons. First, they would present significant opportunities for using larger quantities of alternative fuels. Second, this would close off a perceived way around the requirements for fleets (eliminating the chance to avoid requirements through acquisition of vehicles above the 8,500 lbs. GVWR level). In addition, there was significant interest in adding requirements for transit buses, due to the current success in this market as well as their potential for large consumption of alternative fuel.

Most attendees felt that including any contribution from fuel efficiency would "water down" the contribution from alternative fuels, and was not really in keeping with the purpose of the alternative fuels portions of EPA. At the same time, they felt it was important to keep the rule "wide open" for a variety of vehicle technologies, as well as for generation of credits by fleets that may not be covered.

Several stakeholders voiced strong opinions that no matter which approach is ultimately adopted, enforcement must be made an integral part of the program, and must be seen as a program priority. Otherwise, many fleets were likely to disregard the requirements.

Meetings and discussions with automobile manufacturers focused primarily upon presentation of DOE's authority, possible approaches, and issues. The manufacturers indicated their continuing interest in alternative fueled vehicles and their desire in being informed concerning development of the rule. As a whole, the automakers expressed interest in options that provided the maximum flexibility to the fleets. They also encouraged aggressive enforcement of the existing requirements for Federal, State, and alternative fuel provider fleets. Several automakers reemphasized that their corporate policies do not favor governmental mandates.

#### *C. Public Workshops—August—September 2000*

Pursuant to its Notice of Intergovernmental Consultation, DOE conducted three public workshops (Argonne, IL; Golden, CO; and Washington, DC) and solicited written comments from the public concerning the replacement fuel goals and a potential private and local government fleet program. See 65 FR 44987 (July 20, 2000). These workshops were held to ensure that the requirements of Executive Order 13132 (*Federalism*) (See 64 FR 43255 (August 10, 1999)) and DOE's statement of policy regarding intergovernmental consultation (DOE *Statement of Policy*) (See 65 FR 13735 (March 14, 2000)) were met. Under these directives, DOE must consult with State and local governments before issuing any proposed rule which would have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. To ensure that State and local government organizations had ample opportunities to respond, the first two workshops were limited primarily to those types of organizations, with Clean Cities coordinators also permitted. The Washington, DC workshop was open to all groups. A total of over 100 interested persons attended, and 28 sets of written comments were received. Neither EarthJustice nor any of the entities it represents in the lawsuit that resulted in the court order compelling the issuance of this notice filed comments in those proceedings.

Public workshops were held in Chicago, IL (August 1, 2000); Denver, CO (August 22, 2000); and Washington, DC (September 26, 2000). DOE once again took the opportunity to solicit input on a number of different options for implementing a private and local

government fleet rule. Some of these options involved creative alternatives to the section 507(e) mandate that DOE acknowledged might require new legislative authority for their adoption. The options presented at these workshops included:

Option 1—No Regulatory Requirement for Local Government and Private Fleets is Proposed

Option 2—The Local Government and Private Fleet AFV Acquisition Program as Provided by Section 507(g) of EPAct

Option 3—The Fleet Rewards Program

Option 4—The Replacement Fuel Program

Option 5—Extension of Flexible Options to Other Fleets

Option 6—An Alternative Fueled Urban Transit Bus Acquisition Program as Provided by Section 507(k) of EPAct

The discussion that follows provides details concerning each of these options.

**Option 1—No Regulatory Requirement for Local Government and Private Fleets Is Proposed**

Under this option, DOE indicated that it could decide that no requirement for local private and local government fleets should be promulgated.

**Option 2—The Local Government and Private Fleet AFV Acquisition Program as Provided by Section 507(g) of EPAct**

Under this option, DOE would require certain private and local government fleets to acquire AFVs as a percentage of their new light-duty vehicle acquisitions starting with Model Year 2002. The program was envisioned to parallel the existing program for State and alternative fuel provider fleets.

DOE acknowledged that there were significant drawbacks to this option, primarily that it did not guarantee alternative fuel use or petroleum replacement. Because of the experiences with the similar programs for State and fuel provider fleets, as well as the Federal fleet, there was concern that this option would result in little actual alternative fuel use. DOE indicated that it had considered the option of promulgating a rule, based upon section 507(g), with a fuel use requirement, but stated at the time that it was doubtful that DOE had authority to require fuel use under section 507(g). For this reason, the options presented did not include a 507(g) rule with a fuel use requirement as had earlier been discussed as a possibility.

**Option 3—The Fleet Rewards Program**

Under this option, DOE would craft a regulatory program that encouraged fuel use. Although the local government and private fleet market is very large, imposing AFV acquisition requirements

on this market would not necessarily result in the expansion of alternative fuel use, nor the complementary expansion of the alternative fuel infrastructure necessary to permit that expansion. DOE again reiterated its belief that section 507(g) does not require the fleets to use alternative fuel in the AFVs they acquire. DOE indicated that it was considering adoption of a Fleet Rewards Program to fill this gap. Under this option, fleets could meet the requirements of 507(g) directly (through AFV acquisitions), or opt into the Fleet Rewards Program under which they could meet their requirements through a combination of voluntary AFV acquisitions and alternative fuel use.

Under the Fleet Rewards Program, the number of light-duty vehicles acquired by a fleet in a model year would still serve as the basis for determining the potential proposed rule's requirements. As under the prior option, a specific percentage of the light-duty vehicles each covered fleet acquired would have to be AFVs. However, the Fleet Rewards Program would differ by allowing a fleet to take specific actions, called AFV-Equivalency actions, to achieve compliance with its AFV acquisition requirements while also encouraging the use of alternative fuel. Specifically, a fleet would receive AFV-Equivalency Credits for any size and class of AFV it acquired, and for each 500 gasoline gallons equivalent (GGEs) of alternative fuel it consumed. Each AFV acquired by a fleet, regardless of size or class, would earn an AFV-Equivalency Credit. Each discrete use of 500 GGEs of alternative fuel would also earn an AFV-Equivalency Credit. Two AFV-Equivalency credits would be allocated for the acquisition of dedicated AFVs. The operation of an existing dedicated AFV in a fleet would also be eligible for AFV-Equivalency Credit.

**Option 4—The Replacement Fuel Program**

For Option 4, DOE stated it was considering whether to design a program different from the 507(g) acquisition requirements, that was more tailored to achieving the overall goals of displacing petroleum through use of replacement fuel. Such a program might avoid the shortcomings of EPAct's existing approach toward fleets, which solely focuses on acquiring AFVs, but not on the use of alternative fuel.

The Replacement Fuel Program would require fleets to reduce their light-duty vehicle petroleum usage by increasing the percentage of replacement fuel used by their light-duty vehicles. In order to use a sufficient amount of replacement

fuel, fleets would eventually need to acquire AFVs, even though AFV acquisitions themselves would not be specifically required. DOE proposed a possible compliance schedule that included certain percentages, which represented the portion of a fleet's light-duty fuel use that would have to be replacement fuel. The required replacement fuel portion of a fleet's light-duty vehicle fuel use would eventually rise to 50 percent. Another option that was presented included adopting a schedule that would rise to a maximum of 70 percent, which is the same as the top AFV acquisition percentage requirement set forth in section 507(g).

As with other fleet programs, this option would include a credit program allowing fleets to bank or trade credits. However, since the Replacement Fuel Program would not be restricted to the credit program currently in place for State and alternative fuel provider fleets, the program could be designed to provide fuel providers with replacement fuel credits for installation of refueling stations, which they could then sell to organizations with requirements under the Replacement Fuel Program. Under this approach, there would also be a new opportunity for fuel blends to have a key role, since blends of replacement fuels with conventional fuels would greatly assist fleets in meeting their requirements. This option could include extending credit generation to non-covered fleets or to the general public.

#### Option 5—Extension of Flexible Options to Other Fleets

Participants in the stakeholder groups discussion repeatedly asked DOE whether any of the optional program concepts (such as the Fleet Rewards Program) could be extended to fleets currently operating under the Alternative Fuel Transportation Program. The two types of fleets currently covered by this program are State government and alternative fuel provider fleets.

Section 507(o) of EPCA required that DOE promulgate a rule requiring State fleets to acquire specified percentages of AFVs. The State program acquisition requirements started in model year 1996 (ultimately modified to 1997) with percentages increasing through model year 2000 (modified to 2001) to a maximum of 75 percent. Because EPCA section 507(o) makes the State fleet AFV acquisition mandate program mandatory, DOE does not believe that it could extend the Fleet Rewards Program concept to State fleets.

Likewise, section 501 of EPCA required DOE to promulgate a rule

covering alternative fuel provider fleets. Again, the language in this section made it clear this was a mandatory program. Section 501 specifies an AFV acquisition program, with requirements starting in model year 1996 (modified to 1997) and increasing to 90 percent or more of new acquisitions in model year 1999 (modified to 2000) and thereafter. Congress also provided one additional requirement on alternative fuel providers which was not imposed on any other fleet type: that their AFVs must operate on alternative fuels wherever the fuels are available. DOE believes it would be inappropriate to allow alternative fuel provider fleets to receive credits for using alternative fuels when they are already required by statute to do so.

The Fleet Rewards Program option would only allow covered fleets to earn credits. The Replacement Fuel Program, on the other hand, would allow non-covered fleets to earn credits to provide additional flexibility, encourage additional persons to use alternative fuels, and possibly increase the overall use of alternative fuels.

#### Option 6—An Alternative Fueled Urban Transit Bus Acquisition Program as Provided by Section 507(k) of EPCA

This option was previously discussed with stakeholders and in the ANOPR. DOE again solicited comments on whether it should adopt a fleet rule that included urban transit buses, as authorized under section 507(k) of EPCA. DOE offered several different options for how transit operators could comply with a fleet requirement. One possible option would require that a portion of new bus acquisitions be alternative fuel buses, with percentages requirements similar to those contained in section 507(g) or perhaps rising to a maximum of only 50 percent. Another possible option would allow urban transit bus operators the opportunity to "opt into" the Fleet Rewards Program as an optional compliance path. Under this approach, urban transit bus operators might receive credit both for acquisitions of AFVs and for alternative fuel use. As with the light-duty vehicle program, the bus program would include a fair and appropriate AFV-Equivalency Credit program.

DOE also discussed a Replacement Fuel Program for urban transit bus fleets. DOE requested comments on whether urban transit bus operators should have a separate Fleet Rewards or Replacement Fuel Program, or whether it should be a subset of a possible Fleet Rewards or Replacement Fuel Program for private and local government fleets.

#### Summary of Workshop Proceedings

The first workshop was held on August 1, 2000 in Chicago, Illinois. Representatives from State government, city governments, and Clean Cities coalitions located in Illinois, Wisconsin, and Indiana were the primary attendees.

Representatives at the workshop generally agreed that DOE should take steps to increase use of alternative fuels and reduce dependence on petroleum imports. A number of organizations indicated that additional efforts to promote the use of alternative fuels would likely not occur without government action. A number stated that many of the voluntary programs to promote use of alternative fuels have been developed in anticipation of new mandates. These organizations said that without additional mandates from DOE these efforts would stall.

Representatives generally agreed that whatever mechanism DOE selects needs to be flexible and focus on fuel use. There seemed to be slightly more support for a fleet rewards-type concept, certainly more than for a straight 507(g) AFV acquisition mandate. The Replacement Fuel Program option also generated considerable interest and prompted many questions. Attendees also thought that DOE should gradually phase in any option it might select, whether requirements for private fleets could be promulgated separately from requirements for local government fleets, since the situations of private and local government fleets are very different.

Some attendees at the workshop expressed concern about the level of refueling infrastructure—both its current and future availability, and what it will take to encourage the necessary investments by fuel retailers. Representatives from areas with relatively little refueling infrastructure were concerned about options focused on fuel use. Ethanol was singled out as a concern—there are many FFVs that could operate on it, but very few stations, and fuel cost has been high.

Some commenters indicated that fleets are moving away from central refueling, which may make fuel records difficult to obtain for fuel use-based programs. In addition, even centrally-fueled fleets often do not keep records on a vehicle-by-vehicle basis, and therefore it may be difficult to determine which fuel is used in a light-duty vehicle and which in a medium-or heavy-duty vehicle. Commenters also continued to express concerns about vehicle availability.

A number of local government organizations (especially cities) said

their fleets likely would oppose a mandatory program. Other organizations expressed significant concern that private fleets, and their representatives, would fight any requirements (including through court challenges). Other representatives indicated that DOE should simply "get on with it," whatever DOE should decide to do.

Organizations not supporting mandates stated that they supported incentives instead of mandates. Despite the fact that no large source of funds was expected to be available from DOE, organizations asked for DOE's assistance in applying for funds from other sources (e.g., CMAQ funds). In addition, several organizations indicated that incentives must be large enough to make them worth pursuing because small grants simply are not worth the time and expense required to secure them.

Some attendees expressed interest in extending flexible options to other fleets, although there was concern regarding the administrative burden this would place on DOE and whether DOE would be able to obtain sufficient funding to implement such a program properly. Some attendees also expressed interest in transit buses, especially given their success as a niche market for alternative fuels, but most attendees acknowledged they could not provide detailed input on this issue.

The second workshop was held in Denver, Colorado on August 22, 2000. Representatives from State governments, city governments, and Clean Cities coalitions, plus one municipal utility attended. The largest number of representatives were from Colorado, but representatives from California, Louisiana, Kentucky, Kansas, Oklahoma, Arizona, Washington, Oregon, and Missouri attended as well.

As at the Chicago workshop, the consensus was that DOE should take additional actions to increase demand for alternative fuels and to reduce petroleum imports. Additionally, attendees felt that energy goals (and any requirements that might grow out of them) needed to be closely tied to environmental goals, such as those from the Clean Air Act Amendments (Pub. L. 101-549). Attendees said that incentives were the key to building necessary infrastructure. Conversely, tax credits were viewed as too complex and of no real assistance for government fleets. One Clean Cities coordinator pointed out that a number of fleets joined the coalition because of potential future mandates, and that without additional mandates it was unlikely that fleets would continue to be interested in alternative fuels. Participants echoed the sentiment from the first meeting that

regardless of which requirements are imposed, they should ramp up slowly to allow fleets time to plan their acquisitions or determine how to obtain fuel. Attendees again expressed concerns about the necessary infrastructure—not only the number of refueling sites but also maintenance and training requirements for stations as well as actually being able to reliably find the correct fuel. There was some frustration with the level of investment by fuel providers.

Attendees generally favored the Replacement Fuel Program and the Fleet Rewards Program, the latter receiving the most support. There was general support for extending credits to non-covered fleets. Fleets already covered under the existing State and Alternative Fuel Provider Programs expressed an interest in participating in either the Replacement Fuel Program or the Fleet Rewards Program. A common theme was that fuel use should be encouraged or required. A very small number of attendees opposed any kind of new mandate. Several representatives addressed transit buses, emphasizing local air quality issues and the benefits of using alternative fuels in transit buses. Several attendees felt that there would be more overall support for a new regulatory program if transit buses were included.

There was some general concern with the technical performance of AFVs. Many of these concerns were associated with earlier generation vehicles, including conversions. However, several commenters noted that there also had been problems with vehicles offered by OEMs.

The last workshop was held in Washington, DC on September 26, 2000. Unlike the previous two workshops, attendees included not only representatives from State, city governments, and Clean Cities coalitions, but also from nongovernmental entities including transit operators, alternative fuels associations, vehicle manufacturers, fleet associations, and fuel providers.

A number of attendees made specific points about the replacement fuel goals. Some said the replacement fuel goals covered by sections 502 and 504 of EPCA were important to determining what path to take. Several attendees indicated that more data and analysis were required in order to make decisions. Others said it would be arbitrary for DOE to set a revised goal in the absence of this information. Some attendees identified the need for an overall plan incorporating all regulatory and voluntary programs and others suggested that a coordinated approach

for implementation of programs between State, local, and Federal Government efforts is very important. For example, many participants believed DOE should be working more closely with EPA.

Certain representatives asserted that environmental drivers for alternative fuels, while still important in the near-term would diminish in the future as petroleum vehicle technologies become cleaner. Attendees said flexibility was key element of all programs. Several attendees stated that they were looking to DOE to display leadership with respect to alternative fuels. Attendees had differing opinions on the subject of efficiency and its role within the goals and under fleet programs. Some felt that programs should address both efficiency and alternative fuels. Others felt that efficiency was not addressed within Title V of EPCA and therefore was outside of DOE's authority. Some attendees asserted that alternative fuel use would displace more petroleum than efficiency measures, at least on a per-vehicle basis.

The Washington, DC attendees also discussed the subject of barriers to greater utilization of alternative fuel and replacement fuel. First, they identified the following overall barriers: Vehicle incremental purchase costs, vehicle reliability and range, fuel costs, public/private education and awareness, and infrastructure. Second, concerning vehicle costs, several participants indicated that it might help if they could use the General Services Administration buying schedule, or if all fleet purchases could be "bundled" to reduce costs through larger acquisitions. Third, attendees wanted DOE to work more closely with OEMs to ensure that AFVs meet covered fleet demand for performance, range, reliability, and design. For example, several fleet managers asserted that OEMs adding tanks in pickup beds to increase range was unacceptable, since it reduces pickup bed utility. R&D was also highlighted as a key need, especially since the OEMs are still spending many times more on R&D to improve petroleum-fueled vehicles than AFVs. Fourth, within infrastructure, attendees identified refueling availability and reliability, the need for trained technicians, maintenance facility costs, and the ability to have vehicles maintained at convenient facilities as key issues. Several fleet managers asserted that their costs would rise if a fleet AFV acquisition mandate were promulgated, not only because of increased costs to meet the vehicle or fuel acquisition requirements, but also for increased costs of maintenance and

to conduct planning and reporting. Fifth, attendees generally agreed on the need for incentives to help offset the costs of moving toward alternative fuels, especially the costs of infrastructure. Some stated that incentives should be adopted instead of mandates, while others said incentives were useful in conjunction with mandates.

The attendees at the Washington, DC workshop also raised issues concerning education and outreach needs. First and foremost they saw, education and outreach programs as key activities, whether or not a fleet rule is proposed. They identified a major need to provide information to fleet operators and decision-makers. Second, they stated that education of personnel is also now more complicated, because of the need to train them on the aspects of complex, computer-controlled vehicles. Third, attendees asserted that most of the public does not understand the true affect of oil use, and how individual actions impact the Nation's energy security. Attendees argued that the general public hears about supply issues, but not about demand. They asserted that large vehicles (like sport utility vehicles and full-size pickup trucks) are often not actually needed by the drivers using them, but that the OEMs are selling these vehicles in large numbers. Attendees argued that until the general public understands the impacts of oil use, support for higher budgets (such as for local governments or incentives) to help AFV programs, and changes to the relative economics of oil and alternative fuels is unlikely.

In contrast to the attendees at the first two workshops described above, attendees at the Washington, DC workshops had widely differing opinions on possible regulations. This wide divergence of opinions was primarily was due to the unrestricted attendance at the Washington workshop.

While a number of attendees supported some form of regulatory action by DOE, several not only had a negative view of mandates, but also asserted that because of the substantial legal issues presented, virtually any mandate by DOE would be met with litigation. Of those who supported regulatory action, most supported a Replacement Fuel Rule, with some stating that the Fleet Rewards Program should be a fall-back position. Most attendees supported a flexible approach that focused on fuel use, and felt that vehicle acquisition programs do not result in alternative fuel use. Several commenters felt that unless DOE moved forward with some regulatory action, it

would be sending a message that replacing petroleum is not important.

Several attendees were interested in whether private fleets could be separated from local government fleets, so that different requirements could be imposed on each. Several State government representatives discussed the relationship between a potential private and local government rule and the existing fleet regulations because they were interested in opting into a Replacement Fuel Rule or Fleet Rewards Program.

Attendees said enforcement of existing and future fleet programs was an issue. For any regulations put in place, commenters asserted that DOE must be committed to enforcing them to ensure that the program goals are being achieved.

#### Summary of Written Comments

DOE received 28 sets of written comments in response to the notice for intergovernmental consultation, from equipment suppliers, local governments, alternative fuel organizations, Clean Cities coalitions and coordinators, and fleet management and leasing organizations, among others. These comments in many respects echo the remarks made at the three workshops. Some important themes run through these comments, and are summarized below.

While most comments focused almost exclusively on a potential fleet requirement rule, a few key addressed the replacement fuel goals. A representative from a conversion company asserted that reducing the use of petroleum is important, and that incentives are needed for natural gas companies to provide public stations. The representative also stated that grants are needed for stations and equipment, but organizations trying to move things ahead are being penalized by matching requirements. One local government representative submitted a similar statement, arguing that DOE should focus on reducing the financial burden on fleets from AFV acquisition programs, through additional grants for vehicles and refueling infrastructure.

An alternative fuel association representative stated that EPCA's energy security objectives are not being met under current conditions. This representative felt that the present regulatory framework is not effective in displacing petroleum, and that DOE should reform existing fleet programs by adding greater flexibility and multiple options. The representative also believed that DOE must realize EPCA's replacement fuel goals cannot be achieved solely through AFV

acquisitions and alternative fuel use by private and local government fleets. This representative supported adoption of financial and non-financial incentives, including tax incentives and grant programs, especially for infrastructure.

A representative for Clean Cities coalitions stated that its chapters strongly support fuel-neutral incentives. This representative said its chapter were working toward an initial appropriations target of \$25–30 million to support AFV acquisitions, infrastructure construction, and educational programs. This additional funding would be used to increase alternative fuel use.

One Northeastern State asserted that not achieving the replacement fuel goals set forth in EPCA is a function of policy limitations, not potential. The State said fleets are acquiring FFVs and dual-fuel vehicles, and thus gaining the capability of using alternative fuels, but operating them on gasoline. The State felt that DOE should keep the 30 percent by 2010 replacement fuel goal in EPCA.

The U.S. Conference of Mayors, an association representing potentially-covered fleets, stated that it strongly supports policies to promote use of alternative fuels, but does not support mandates. It suggested that DOE work with communities to support the use of alternative fuels. It also suggested that DOE work with EPA to develop a comprehensive policy integrating clean air objectives and EPCA goals. Its members adopted a resolution supporting reducing dependence on imported fossil fuels and increasing fuel diversity, as well as one indicating that widespread use of alternative fuels provides air quality, economic, and national security benefits. It said that Clean Cities has not provided sufficient funding to support widespread promotion and implementation of alternative fuel programs. Further, the resolution indicated that community leaders are committed to actively implementing AFV projects if adequate resources are available, and that the organization supports making alternative fuels a priority for the Nation, but calls upon the Federal government to provide sufficient funds. In addition, the National League of Cities expressed the concern that the proposals presented did not include sufficient information concerning costs to local governments and availability of infrastructure.

An association representing vehicle dealers indicated that a successful local government or private fleet AFV acquisition program needs to try to reduce the cost differentials between



AFVs and powered vehicles for cost-sensitive fleet buyers. This could include tax credits, grant funding, access to Federal acquisition pricing, and an expansion of allowable vehicles to include hybrids. Cost and performance are key considerations for fleets, and alternative fuels must be comparable to, if not better than, conventional fuels. The association said that most available alternative fuels do not meet these criteria. Therefore, it opposed new mandates because there are still too many barriers to increased use of alternative fuels to make an AFV acquisition mandate practicable. The association suggested that DOE could scale back Clean Cities to focus on niche market fleets selected for high likelihood of success and reproducibility. The association said resale value of used AFVs was a big issue to dealers, who are the largest purchasers and resellers of used fleet vehicles. If AFVs are not well-accepted by the market, the impact on dealers could be disastrous, according to the association. It said that DOE should assist in guaranteeing a resale value floor.

A member of an association of State fleet administrators suggested that programs need to provide incentives or accommodation for future technologies and current emerging technologies, especially high fuel economy vehicles. The commenter strongly urged a restructuring of the basic legislation to allow flexibility to recognize technologies that achieve the objectives of EPCa and the Clean Air Act Amendments.

A large city government suggested creation of a voluntary incentive-based program, although it cautioned that DOE needs to determine whether this would meet DOE's objectives under EPCa. It felt that DOE needs to conduct cost and operational impacts analyses and seek long-term Federal funding to offset costs for local governments for operation and maintenance, repair facility retrofits, land acquisition, staffing, etc., and that DOE should also coordinate efforts with EPA. Specifically, it stated that DOE needs to assist local governments concerning technical issues, such as vehicle availability, performance, operational limitations, health and safety requirements, as well as lack of fueling infrastructure.

One fuel producer asserted that if DOE chooses to seek to increase the use of alternative or replacement fuels through funding, it should be done in a fuel-neutral manner, providing equal funds for all alternative/replacement fuel. Under this approach, if a fuel does not require funding for refueling

infrastructure, funds could be used to increase production. A Midwestern State argued that the two most critical aspects of reducing petroleum consumption are having AFVs available that meet consumer needs at prices comparable to conventional vehicles, and having alternative fuels readily available at prices comparable to conventional fuels. The State did not view raising the price of petroleum to high levels as the answer. From a fleet perspective, the State said efforts to provide incentives to manufacturers and fuel providers have not worked well, since the availability of vehicles and fuels is still relatively low and has grown very slowly.

A second alternative fuel provider association voiced its preference for a comprehensive package of incentives that would encourage, not require, private fleets to use AFVs and alternative fuels. It also argued that energy security is an important national priority, and that the U.S. will not be able to protect itself from future oil supply disruptions unless it offsets petroleum demand with alternative fuel use. The association also asserted that more efficient vehicles were no substitute for AFVs in this regard. "Even if more efficient vehicles were available in large numbers, it would take many years for them to replace the existing fleet of vehicles and have an impact on petroleum consumption \* \* \*. Efforts to increase efficiency should be encouraged but should not be used to undermine the basic goal of Titles III-V of EPCa: replacing petroleum motor fuels with the use of alternative fuels."

This trade association also believed that the EPCa goal of 30 percent replacement fuel use by 2010 was a high requirement, but that it is an important goal that should be retained. It commented that the markets covered by EPCa are too small, especially since medium- and heavy-duty vehicles are excluded, and are thus insufficient to create economies of scale that would cause vehicle owners not subject to an acquisition mandate to participate. In addition, it said that the government has been slow to enforce existing programs. It also mentioned FFVs as a problem, since due to the higher price of the fuels, there is no incentive for operators to use anything but gasoline. The association asserted that financial incentives would be key, especially to encourage voluntary alternative fuel use. It suggested that these could include tax incentives, increased funding for infrastructure projects, and a competitive grant program. It also said that market development, including building up international markets,

identification of key market sectors, and coordination of AFV acquisitions among all types of government fleets should be pursued. Air quality and energy security criteria should be applied when providing Federal grants, and States should receive State implementation plan (air quality) credits for AFV programs. In addition, the trade association argued that funding for alternative fuel R&D is also required to improve vehicle efficiency, reduce emissions, reduce the cost and improve the reliability of fueling infrastructure, and demonstrate AFV systems in new applications. It said that education and outreach were required to improve public awareness of alternative fuels and their benefits.

One Western State stated that a number of efforts should be pursued to reduce the barriers to alternative fuel use. For example, it said that the Federal Government should work with local organizations to more fully utilize existing refueling stations. It said that the Federal fleet should not put large numbers of ethanol FFVs into States where there is no ethanol refueling. Along with a county board of commissioners from another Western State and a California coastal city, it also encouraged DOE to improve grant programs, encourage legislation to help fleets for whom tax incentives do not work, encourage development of highly fuel-efficient vehicles, encourage the use of new technologies (e.g., hybrid vehicles), provide recommendations to Congress for encouraging use of AFVs and alternative fuels by the public, change current programs to be fuel- rather than AFV-based, and establish a reward program for organizations that exceed their requirements.

A small Eastern State's agriculture department stated that it has been working with soybean organizations to support use of biodiesel in its State. It believed that the future of U.S. agriculture depends upon increasing the utilization of the Nation's renewable resources and that DOE should consider options that benefit the use of agricultural-based fuels, which can help energy security, the environment, and the agriculture sector.

The fleets that would be potentially covered by new regulations were overwhelmingly opposed to the adoption of mandates. Most fleets expressed their support for alternative fuels but said that they have limited funding to pay for the added costs of many (especially local governments) such requirements. These fleets supported using incentives to encourage increased use of alternative fuels. A number of State representatives

expressed their interest in being included in a Replacement Fuel or Fleet Rewards Program. These fleets generally thought that it would be unfair and impracticable to set up two separate programs, one for covered State fleets, and another new one covering local government fleets.

At least one commenter expressed an interest in drastically reworking the existing EPCa fleet programs in order to provide credits for infrastructure investments. Several commenters favored providing credits for petroleum-fueled hybrid electric vehicles. Most commenters supported a Fleet Rewards or Replacement Fuel Program. Very few commenters were in favor of adopting a fleet program of the type set forth in EPCa section 507(g) (*i.e.*, an AFV acquisition only mandate). In fact, a number of commenters suggested that such a program would not result in significant petroleum replacement.

Several comments addressed enforcement and potential loopholes. One commenter asserted that if DOE is not serious about enforcement it should not adopt new mandates. It also noted that fleets could break up their fleets into smaller units or develop employee vehicle ownership programs as a way of avoiding the mandates. Several comments questioned DOE's authority to promulgate any new regulations. One comment noted that EPCa's deadline for promulgating a private and local government fleet rule had lapsed.

Only one organization addressed the issue of whether DOE had the legal authority to adopt a Fleet Rewards or Replacement Fuel Program. That organization asserted that DOE had authority under section 502 of EPCa to promulgate a Replacement Fuel Program but did not have that authority under section 507(g). The comments appear to assert that DOE has authority independent of section 507(g) to require fuel use regardless of the fleets that are covered.

#### D. November 2002 Meeting

In November of 2002, representatives of the National Association of Fleet Administrators (NAFA) met with DOE officials to express their views on the private and local government fleet rulemaking. DOE stated at that time that it was working on a draft. NAFA representatives stated that its members are opposed to additional mandates, including requirements to purchase AFVs. With respect to the replacement fuel goal, NAFA expressed concern that DOE would establish a replacement fuel goal that would not accomplish any societal objective or any of the stated objectives of EPCa, but that was

gerrymandered so that it would serve as the basis for DOE to establish an AFV acquisition mandate for private and local government fleets.

### III. Private and Local Government Fleet Determination

#### A. Statutory Requirements

EPCa section 507(e) directs DOE to determine whether private and local government fleets should be required to acquire AFVs. In this respect, the rulemaking process for the private and local government fleet rule is very different from the previous rulemaking on the State government and alternative fuel provider fleet rule. In the case of the State government and alternative fuel provider fleet rule, DOE was not required to make any findings in order to promulgate a fleet rule. The determination of whether to adopt regulations for private and local government fleets, however, is conditional and depends on DOE first making several critical findings. Regulations covering private and local government fleets, if adopted, would in other respects likely be similar to those already in place for State government and alternative fuel provider fleets. As described above, these regulations essentially require that a percentage of a covered fleet's annual acquisitions of light-duty vehicles must be AFVs. See *Alternative Fuel Transportation Program*, 10 CFR Part 490. Section 507(g) sets forth a tentative AFV acquisition schedule for private and local government fleets should DOE establish such a program.

Section 507(e) sets forth the requirements for determining whether a private and local government fleet program is "necessary." Section 507(e)(1) states that:

\* \* \* Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary [of Energy] finds that—(A) the goal of replacement fuel use described in section 502(b)(2)(B), as modified under section 504, is not expected to be actually achieved by 2010, or such other date as is established under section 504, by voluntary means or pursuant to this title or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A), as modified under section 504; and (B) such goal is practicable and actually achievable within periods specified in section 502(b)(2), as modified under section 504, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals. (42 U.S.C. 13257(e)(1))

The question addressed in this portion of this **SUPPLEMENTARY**

**INFORMATION** is whether a fleet rule is "necessary" under the section 507(e) standard. DOE believes that a determination of whether a fleet rule is "necessary" depends on the following factors: The amount of replacement fuel use that would result if such a program would be adopted (*i.e.*, whether it provides more than a very small percentage contribution to overall U.S. use of replacement fuels in motor vehicles); the level of certainty about the contribution such program might make; whether the replacement fuel use resulting from such a fleet rule could be encouraged through other means, including voluntary measures; and whether certain necessary market conditions (*e.g.*, whether alternative fuel and suitable AFVs are sufficiently available) exist to support a new fleet rule.

#### B. Rationale for the Private and Local Fleet Determination

##### Statutory Limitations

As described above, while EPCa authorizes DOE to mandate certain vehicle acquisitions, it severely limits the universe of fleets that would be covered by a private and local government fleet mandate, thus limiting the replacement fuel use that would result from such a program. The definition for "fleet" in EPCa section 301(9), (42 U.S.C. 13211(9)), limits coverage to large, centrally-fueled fleets located in major metropolitan areas. Only those fleets that operate or own at least 50 or more light duty vehicles may be considered for coverage. In addition, the definition of fleet specifically excludes from coverage a number of vehicle types and classes (*e.g.*, rental vehicles, emergency vehicles, demonstration vehicles, vehicles garaged at personal residences at night, etc.). Vehicles that tend to use larger amounts of fuel, medium- and heavy-duty vehicles, are also excluded from coverage.

Even for potentially covered fleets, EPCa section 507(i) provides several opportunities for regulatory relief through exemptions for non-availability of appropriate AFVs and alternative fuels. Specifically, any private and local government fleet rule "shall provide for the prompt exemption" by DOE of any fleet that demonstrates AFVs "that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition," alternative fuels "that meet the normal requirement and practice of the principal business of the fleet owner are not available in the area in which the vehicles are to be

operated,” or for government fleets, if the requirements of the mandate “would pose an unreasonable financial hardship.” Section 507(a)(3) further reinforces these exemptions: “Nothing in [Title V of EPCA] shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of the fleet.”

Taken together, these statutory exemptions would likely dramatically lower the number of fleets and fleet vehicles subjects to a private and local government AFV acquisition mandate. The provision concerning state and local government might not be implicated by a majority of otherwise covered government fleets, since in times when local government budgets are particularly stretched and many local governments are required to cut services or raise taxes to maintain existing levels of service, there will be greater likelihood that petitions for exemption from hard-pressed local governments would be granted. Even if DOE were disinclined to grant such petitions, the prospects that these petitions must be considered would create a “stop and go” quality about the local government portion of a private and local government fleet requirement program.

The ability of a private and local government fleet rule to affect petroleum consumption also depends, in significant part, on whether DOE can require covered fleets to use alternative or replacement fuels in addition to requiring that they acquire AFVs. DOE’s experience with fleet programs demonstrates that vehicle acquisition requirements alone result in a relatively small (in the context of overall U.S. fuel consumption) amount of petroleum replacement. However, as will be explained below, DOE believes it does not have the authority, were it to promulgate a private and local government fleet mandate program, to require that the vehicles acquired use any particular fuel, including alternative fuels.

The only explicit requirement for fuel use in EPCA is contained in section 501, which extends only to alternative fuel provider fleets. Section 501(a)(4) states that “vehicles purchased pursuant to this section shall be operated solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.” Section 507, which concerns private and local government fleets, does not contain a similar provision, nor does it contain a provision either authorizing DOE to

mandate fuel use or explicitly prohibiting DOE from mandating fuel use. Therefore, DOE recognizes that it may be argued that section 507’s silence leaves the issue of imposing a requirement to use alternative fuel open to DOE rulemaking authority.

However, DOE believes the more appropriate interpretation is that, because Congress specifically required use of alternative fuel in section 501(a)(4), but not in section 507, the omission was deliberate. As a result, DOE believes that Congress did not intend for DOE, when acting under section 507, to have authority to promulgate regulations containing a requirement that fleet vehicles use particular types of fuel.

Although this textual analysis is sufficient to support DOE’s determination that it should not impose a fuel use requirement under section 507(e) and (g), it also is worthwhile to revisit Congressman Philip Sharp’s remarks when he called up the conference report on EPCA for House approval. Congressman Sharp was one of the key architects of EPCA, and the floor manager for the bill in the U.S. House of Representatives. Congressman Sharp said:

Under section 501, covered persons must actually run their alternative fueled vehicles on alternative fuels when the vehicle is operating in an area where the fuel is available. This requirement was not included in the fleet requirement program under section 507, because the conferees were concerned that the alternative fuel providers might charge unreasonable fuel prices to the fleets that are not alternative fuel providers if such fleets were required to use the alternative fuel.

138 Cong. Rec. H11400 (October 5, 1992).

Thus, Congressman Sharp’s floor statement is fully consistent with DOE’s interpretation that it does not have statutory authority to mandate fuel use under a section 507 fleet program, and that in enacting section 507, Congress specifically intended to withhold that authority from the agency.

Finally, DOE is also limited in its authority to affect other market behavior. Section 504(c) precludes DOE from promulgating rules that would:

\* \* \* mandate the production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels. (42 U.S.C. 13254(c))

These limitations severely restrict DOE’s opportunities to affect the use of replacement fuel, or to establish the market conditions necessary to support a private and local government fleet rule.

In addition to all of these provisions, Congress furthermore enacted a petition provision in section 507(n). That section provides:

As part of the rule promulgated \* \* \* pursuant to subsection \* \* \* (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program \* \* \* nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet. In the event that the Secretary determines that a modification or suspension of the fleet requirements program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing. (42 U.S.C. 13257(n))

Thus, even if DOE had authority to require alternative fuel use or could adopt an approach that awarded credits (e.g., Fleet Rewards) for fuel use, the “normal requirements and practices” provisions in sections 507(i)(1) and 507(g)(3), described above, and the petition procedure for modification or suspension of a fleet requirement program under section 507(n), would likely result in many fleets potentially covered by the fleet rule in the first instance being able to obtain relief from the rules requirements.

Consequently, it is fair to say that there is an unusually high degree of regulatory uncertainty built into Title V of EPCA, and that Congress has substantially limited the effectiveness of any fleet program that might be promulgated under section 507. The nature of the exemption and petition procedures and the associated regulatory uncertainty would undermine the potential effectiveness of a regulatory mandate to purchase significant numbers of alternative fueled vehicles, and accordingly, support today’s proposed finding that a private and local government fleet requirement program would make no appreciable contribution to actual achievement of

any replacement fuel goal and therefore is not "necessary" under the section 507(e) standard.

#### Analysis of Potential Replacement Fuel Use

The limitations on the potential contributions of a private and local government fleet program identified above are supported by analyses conducted for and by DOE. In both *Technical Report 14* and the *Section 506 Report*, estimates of the potential replacement fuel use from a private and local government fleet program were very similar. *Technical Report 14* estimated total fuel use from all EPA fleet programs to be approximately 1.2 percent of U.S. gasoline use (p. 63, Table III-21). The *Section 506 Report* was only slightly more optimistic, indicating that "[a]lternative fuel use by EPA fleet programs, even with the contingent mandates for private and local government fleets, is unlikely to provide more than about 1.5 percent replacement fuel use \* \* \*" *Section 506 Report* at p. 35. In either case, subtracting out the portion of replacement fuel use represented by the existing (Federal, State, and alternative fuel provider) fleet programs, would leave the potential private and local government fleet program contribution at closer to 1 percent. It should be noted that both reports chose to include calculations based only upon the percentage of light-duty fuel use, represented as solely gasoline at the time of these reports. Therefore, replacement fuel use from the private and local government fleet program when viewed as a percentage of all on-highway motor fuel use would be on the order of 0.7 to 0.8 percent.

Both the analyses in *Technical Report 14* and the *Section 506 Report* were conducted before DOE had much experience with implementation and operation of the EPA fleet programs. This experience has shown that the number of fleets originally envisioned to be covered was far larger than actually occurred.

Estimates prepared by Oak Ridge National Laboratory indicated that approximately 380,000 AFVs would be acquired annually pursuant to the various AFV acquisition mandates in EPA, if a private and local government fleet program were promulgated and once all EPA programs reached their maximum mandated percentage requirements. (See *TAFV Model Report*, p. 25, and Technical Documentation of the Transitional Alternative Fuels and Vehicles TAFV Model, Model Version 1.0, ONRL, July 1997, table 10, pp. 32-33 (hereafter, *TAFV Documentation*)).

More specifically, fleets covered by the current Federal Government, State Government, and Alternative Fuel Provider fleet programs were projected to require approximately 60,000 AFVs each year, while private and local government fleets were projected to require approximately 320,000 vehicles each year. Based upon replacement rates of 3 years for private fleet cars, 4.5 years for private fleet light trucks, and 6.75 years for all local government light-duty vehicles, this equates to a total covered fleet vehicle population of approximately 1.87 million light-duty fleet vehicles at the maximum AFV acquisition requirement of 70 percent.

The TAFV model, however, has proven to be incorrect for fleets currently subject to EPA AFV acquisition requirements. That model estimated that the current EPA fleet programs would result in approximately 60,000 AFV acquisitions annually, but DOE's experience with those programs shows that the covered fleets are acquiring closer to 20,000 to 25,000 AFVs per year. (See Federal Fleet and State and Fuel Provider programs at <http://www.ott.doe.gov/epact>.) Based on this experience, which DOE believes would likely be replicated with respect to private and local government fleets, the TAFV estimate of AFV acquisitions that would result from a private and local government fleet mandate probably is 2 to 2 1/2 times the actual level of AFV acquisitions that would result. Thus, annual AFV acquisitions resulting from a potential private and local government fleet AFV acquisition mandate probably would be in the neighborhood of 130,000 to 160,000, with total covered light-duty fleet vehicles of approximately 750,000. Similarly, DOE's experience has also been that fleets not required to use alternative fuel often tend to acquire FFVs or bi-fuel vehicles, and operate them on gasoline. There is no reason to believe the results would be any different with private and local government fleets.

A more recent analysis, *The Alternative Fuel Transition: Results from the TAFV Model of Alternative Fuel Use in Light-Duty Vehicles 1996-2000* (ORNL.TM2000/168) (September 17, 2000) [hereinafter *TAFV Model Report*], [http://pzl1.ed.ornl.gov/tafv99report31a\\_ornltn.pdf](http://pzl1.ed.ornl.gov/tafv99report31a_ornltn.pdf), appears to incorporate more realistic assumptions regarding these fleet programs. The *TAFV Model Report* states that, "In particular, over all of the price scenarios, we find that the [private and local government fleet] rule increases the alternative fuel penetration in 2010 from 0.12% (without the private and

local government rule) to, at most, 0.37% [with a private and local government rule] of total fuel sales." *TAFV Model Report* at p. 28. Thus, this analysis placed contributions from the private and local government fleet rule at 0.25 percent. Again, as with *Technical Report 14* and the *Section 506 Report*, the percentages were based only upon fuel use by light-duty vehicles. Therefore, the contribution from a potential rule drops below 0.2 percent when compared against all on-highway motor fuel use.

Thus, a potential private and local fleet program under authority provided to DOE by EPA would be expected to contribute, at best, an extremely small amount toward achievement of replacement fuel goals. Even without the statutory limitations in EPA described above, such a contribution would still be very small.

#### Infrastructure and Fuel Availability

During the ANOPR and public workshops, a number of commenters expressed their concern that alternative fuel infrastructure was not adequate to support a private and local government fleet rule. Since that time, it is DOE's view that fuel provider investments in alternative fuel infrastructure have in fact slowed down. In the early 1990's, shortly after EPA's passage, a significant number of natural gas and electric utilities entered the transportation fuels market, hoping to market alternative fuels to fleets subject to the Clean Air Act and EPA. The number of alternative fuel stations, natural gas stations in particular, grew from little more than a handful to several thousand. The total number of alternative fuel stations, however, appears to have stalled or slightly declined in the past few years. See Department of Energy, Alternative Fuel Data Center, *Refueling Stations* ([http://www.afdc.doe.gov/refuel/state\\_tot.shtml](http://www.afdc.doe.gov/refuel/state_tot.shtml)) (Dec. 2002) [hereinafter *AFDC Refueling Stations*].

Restructuring in the utility industry and the lack of demand for alternative fuels have played a part in the reduced role of utilities in the development of these facilities. Under existing fleet mandates and voluntary programs, electric utilities have expressed their discouragement at the lack of EVs on the road. A private and local government fleet rule probably would not appreciably affect that calculus given the small percentage of vehicles covered fleets would seek to operate on those fuels. Therefore, it is DOE's view that, if it were to adopt an AFV acquisition requirement for private and local government fleets, there is no assurance

or even any demonstrable likelihood that utilities would invest in the infrastructure needed to support these fleets.

The ethanol industry also has made only limited investment in building infrastructure for supplying E-85, the fuel used by ethanol FFVs, of which there are several million in service today. That industry has primarily focused its attention on supplying the gasohol and gasoline oxygenate market. DOE furthermore has concerns that if, in the future, the demand for ethanol blends increases as a result of market forces outside of any DOE mandate, there could be a lack of domestic ethanol to meet the demand for E-85. Today, there are only approximately 150 fueling outlets nationwide that provide E-85. *See AFDC Refueling Stations.*

Major energy suppliers, principally oil companies, have been unwilling to invest in the alternative fuels market (or they have actively opposed it) and instead have primarily focused their attention on ensuring that gasoline and diesel fuels meet current and future environmental regulations. Thus, DOE does not expect that the major oil retailers would install infrastructure necessary to support a private and local government fleet rule given the extremely small amount of replacement fuel use that likely would result from such a mandate; certainly that infrastructure is not in place now. This lack of infrastructure is likely to result in exemption requests and petitions to suspend any fleet requirement program DOE might impose under section 507(e), and DOE's granting of those requests.

#### Alternative Fueled Vehicle Availability

Automakers have for several years now offered some variety of AFVs, including passenger cars, light-duty pickup trucks and vans. The availability of these vehicles is in stark contrast to when EPCA was passed. In 1992, there were virtually no OEM vehicles available that operated on alternative fuel. Consumers and fleets had to have an existing gasoline vehicle converted by an aftermarket shop if they wanted an AFV. The AFVs that are available today are built by auto manufacturers for two primary purposes: (1) To meet the needs of the fleets currently subject to fleet mandates; and, (2) to provide credits to automakers that can be used to meet the corporate average fuel economy (CAFE) standards. Automobile manufacturers are awarded CAFE credits as an incentive develop a fleet of AFVs that will in turn lead to the development of infrastructure to support alternative fuel use. Manufacturers currently offer up to a

million new FFVs each year. Other AFVs are available in significantly lower numbers, generally on the order of 10,000 per year.

DOE is concerned that if it adopts a requirement for private and local government fleets to acquire AFVs, there may not be an adequate supply of suitable AFVs available. The number of AFVs that likely would be acquired under a private and local government fleet mandate are, in DOE's view and based on the comments it has received, insufficient to create the market demand that would cause manufacturers to build sufficient numbers of AFVs, suitable for the covered fleets, at affordable prices. Under the existing State government and alternative fuel provider fleet programs, DOE has been obliged to provide exemptions to a number of fleets that are unable to acquire AFVs that meet their business needs. Unless automakers significantly expand their current offerings of AFVs, DOE likely would be forced to process and approve thousands of exemption requests each year.

Because EPCA expressly prohibits DOE from mandating the production of AFVs or to specify the types of AFVs that are made available, there is little that DOE can do, outside of the voluntary efforts already underway with vehicle manufacturers, to ensure that adequate supplies suitable of AFVs would be available.

#### Alternative Fuel Costs and Alternative Fuel Use

At the present time, the cost of some alternative fuels (such as biofuels) exceeds the cost of conventional motor fuel, and it is reasonable to assume that, absent changes in technology, in the supply of petroleum, or in policy as established by law, the price differential will continue and will influence fleet owners and operators for the foreseeable future. The likely effect of the price differential is predictable in light of DOE's experience in administering the State government fleet requirement program under section 507(o) of EPCA. Most State government fleets are acquiring significant numbers of FFVs and operating them lawfully using conventional motor fuels. Although this practice in part may be a function of lack of infrastructure, the fuel cost differential of ethanol is probably a significant contributing factor. There is no reason to assume that the result would be any different—and substantial reason to believe that the result would be exactly the same—if DOE were to impose a private and local government fleet requirement program under section 507(e).

#### Discussion of Previous Proposals

DOE considered but ultimately has decided not to propose a Fleet Rewards or Replacement Fuel Program, or any of the tax credit, tax incentive, or other programs discussed in the earlier stages of this rulemaking proceeding. Many commenters supported these concepts, but few offered any arguments that DOE had authority to implement such programs under section 507(e). On the other hand, a number of comments did question whether DOE had sufficient legal authority to promulgate or implement them. DOE believes it has no legal authority under EPCA to promulgate the tax credit and tax incentive programs that were discussed by DOE and commenters, and believes it is doubtful DOE has authority to promulgate the other types of incentive programs discussed.

One advantage of the Fleet Rewards program was that it did not require fuel use, so it was not an explicit fuel use requirement; it would have allowed fuel use credits to be used instead of requiring vehicle acquisitions. Therefore, the program would not have been an explicit fuel use mandate, which DOE believes it has no authority to promulgate. Even so, DOE still has serious doubt about its authority to adopt such a program under section 507 because EPCA only provides credits for vehicle acquisitions. Specifically, EPCA section 508 sets forth a detailed crediting system, but allows credits to be earned only for AFV acquisitions, not fuel use or some other action. Moreover, even if DOE did have authority to provide credits for fuel use, DOE believes that there would be little incentive for most fleets to choose this option, since they could comply by acquiring FFVs that have little or no incremental cost, and could operate them on gasoline.

In any event, a Fleet Rewards or Replacement Fuel Program would be of little use unless it was accompanied by a mandate for vehicle acquisitions or fuel use; those programs would be alternative methods to comply with the mandates. Because DOE is proposing to determine that a private and local government program is not "necessary" and thus cannot and should not be promulgated, there is no reason or need for DOE to consider or propose adopting a Fleet Rewards or Replacement Fuel Program in this notice. Furthermore, coupling a Fleet Rewards or Replacement Fuel Program with a private and local government fleet AFV acquisition mandate would be extremely unlikely to change significantly the amount of estimated

alternative and replacement fuel use by covered fleets and thus would not alter the analysis described above as to whether a fleet program is "necessary." There is no evidence that the Fleet Rewards or Replacement Fuel Programs would result in enough fuel use to significantly change the economics and practicability of using alternative or replacement fuels, and therefore there is no evidence that such programs would affect covered fleets' willingness or ability to use alternative or replacement fuels to any appreciable degree.

#### Summary of Determination

For the reasons stated in this part of the **SUPPLEMENTARY INFORMATION**, DOE proposes to determine that a private and local government fleet requirement rule under sections 507(e) and (g) of EPCA is not "necessary," and therefore should not be imposed. Such a mandate would make no appreciable contribution (less than 0.2 to 0.8 percent of on-highway motor fuel use) toward achievement of the 2010 replacement fuel goal in EPCA section 502 or a revised goal, and even this extremely small contribution is highly uncertain. As a result, DOE cannot make either of the two determinations set forth in section 507(e), both of which must be determined in the affirmative before a private and local government fleet requirement program can be determined to be "necessary" and thus implemented. At this time, DOE cannot determine that the 2010 replacement fuel goal in EPCA (or a revised goal) is not expected to be achieved "without such a fleet requirement program," or that the replacement fuel goal can be achieved "through implementation of such a fleet requirement program" in combination with other means.

First, there are the limitations in EPCA itself, which include: (1) Limitations on the coverage of a private and local government fleet requirement program to only certain light-duty vehicle fleets; (2) procedures allowing case-by-case exemptions; and (3) DOE's lack of authority to require alternative or replacement fuel use or to create an effective substitute regulatory program. Second, even if DOE imposed AFV acquisition requirements, market conditions will encourage covered fleets to file petitions seeking modification and/or suspension of the entire fleet requirement program and/or its application to specific fleets and vehicles. Those conditions, which are likely to persist for the foreseeable future, are: (1) Lack of an alternative fuel infrastructure; (2) unavailability of suitable AFVs; and (3) high alternative

fuel costs (for certain fuels) relative to the costs of conventional motor fuels.

On the basis of the foregoing, DOE today proposes to determine that a private and local government fleet requirement program is not "necessary" under the standards set forth in EPCA section 507(e) and therefore cannot and should not be promulgated.

#### C. Determination for Fleet Requirements Covering Urban Transit Bus Option and Law Enforcement Vehicles

Section 507(k)(1) of EPCA provides in relevant part: "If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor vehicles in the fleet requirement program established under subsection (g) would contribute to achieving the [replacement fuel] goal described in section 502(b)(2)(B) \* \* \* and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program \* \* \*." (emphasis added). Section 507(k)(2) contains similar language with regard to new urban buses. 42 U.S.C. 13257(k)(1) and (2).

DOE considered whether to interpret section 507(k) to mean that law enforcement vehicle fleets and urban buses must be considered in making a determination under section 507(e) and (g) as to whether a private and local government fleet acquisition mandate program is "necessary" or, alternatively, whether a rulemaking to consider whether law enforcement fleets and urban buses should be covered by a fleet acquisition mandate only may follow completion of a rulemaking under section 507(e) and (g) that determines a private and local government fleet acquisition program is "necessary" and that promulgates such a program. In DOE's view, EPCA prohibits DOE from considering law enforcement vehicle fleets when making the "necessary" determination under sections 507(e) and (g) because such fleets are specifically excluded from the statutory definition of the term "fleet" (42 U.S.C. 13211(9)). Similarly, it is DOE's view that EPCA prohibits DOE from considering urban buses when making the "necessary" determination under sections 507(e) and (g) because the statutory definition of the term "fleet" is limited to "light duty vehicles" which are vehicles no more than 8,500 lbs. GVWR, and under the definition of "urban bus" referenced in section 507(k) and contained in 40 CFR 86.093-2, most urban buses would not qualify as light duty vehicles.

Furthermore, sections 507(k)(1) and (2) specifically refer to "the fleet

requirement program established under subsection (g)." In DOE's view, the better interpretation of section 507(g) is that it did not in and of itself "establish" a fleet requirement program. That section merely sets forth a vehicle acquisition schedule that, in order to have any applicability or force at all, must be implemented by DOE with a rule promulgated pursuant to a determination under section 507(e) that a private and local government fleet rule is "necessary." As a result, in order for section 507(k) to come into operation, a private and local government fleet program first must be "established" by DOE pursuant to the authority in sections 507(e) and (g). Although it is perhaps arguable that subsection (k) could be construed to merely refer to subsection (g) without the necessity for DOE to have first acted to establish a private and local fleet program under sections 507(e) and (g), this alternative interpretation is not as reasonable as DOE's interpretation in view of the text of the statutory definition of "fleet" and the use of that term in subsection (g).

Moreover, in DOE's view, this alternative interpretation is undesirable as a matter of policy. First of all, with respect to urban transit buses, during the earlier stages of this rulemaking some commenters argued that an AFV acquisition mandate should not be imposed on urban transit buses because the buses and their riders already were reducing petroleum consumption by the fact the riders were not using their personal cars. These commenters argued that imposing an AFV acquisition mandate could raise the cost of riding an urban transit bus, which could then reduce ridership and actually increase petroleum consumption by causing riders to return to driving their cars. DOE agrees with these concerns.

Second, and with respect to law enforcement vehicles, EPCA already expresses a policy that such vehicles should not be considered "fleets." DOE believes that, as a matter of policy, it should not seek to impose mandates on law enforcement authorities until a mandate first was extended to other local governmental fleets, both because the numbers are insufficient to appreciably change the overall analysis of the necessity or desirability of a private and local government fleet mandate program, and because commenters generally did not support imposing mandates on such fleets. Therefore, on the basis of the foregoing, today's rulemaking notice does not address law enforcement fleets and urban buses under section 507(k).

#### IV. Whether To Modify Replacement Fuel Goal

DOE has decided not to propose modification of the 2010 replacement fuel goal of 30 percent in this notice of proposed rulemaking. As noted earlier, the process of determining whether to adopt a regulatory requirement for private and local fleets depends on whether such a rule is "necessary" to achieve EPCA's petroleum replacement fuel goals. As part of the process of evaluating whether to propose AFV acquisition mandates for private and local government fleets pursuant to EPCA section 507, DOE reviewed the replacement fuel goals in EPCA section 502 and considered whether to revise them, but decided for several reasons that it would not propose any such modifications.

First of all, EPCA does not require DOE to revise the petroleum replacement fuel goal in order for DOE to determine whether a private and local government fleet rule is "necessary." Although section 507(e)(2) permits DOE to modify the replacement fuel goal in the context of making a private and local government fleet determination, the statute does not require the goals to be modified.

Second, DOE believes it would not promote the right incentives or actions to propose modifications to the 2010 replacement fuel goal at this time. Congress in 1992 created by statute (in EPCA section 502(b)(2)) an initial national goal of using replacement fuels for at least 10 percent of motor fuel used in the United States in 2000, and a long-term goal of at least 30 percent in 2010, on a petroleum fuel energy equivalent basis. EPCA's legislative history does not explain why Congress chose these particular goals and dates, nor does it provide any analysis supporting them. However, and in light of the overall purposes of EPCA, DOE believes that Congress set these particular goals to establish aggressive aspirational petroleum reduction targets for the Federal government and the public. Congress apparently intended to encourage action that would aggressively advance the availability and use of replacement fuels. DOE believes that the goals as set in EPCA were intended to encourage actions that would lead to significant increases in replacement fuel use.

Since EPCA's enactment in late 1992, the Federal government has implemented a number of regulatory and voluntary programs in an effort to increase the use and availability of replacement fuels. These programs are discussed in more detail in the

Introduction section of this **SUPPLEMENTARY INFORMATION.** While these programs have had a favorable impact on the environment and on the use of alternative fuels and replacement fuels, these programs have not had the desired effect of greatly increasing the availability or use of alternative and replacement fuels, or of causing the use of replacement fuels to become a viable alternative, on a large-scale basis, to the use of petroleum-based fuels in vehicles. The result is that although the use of replacement and alternative fuels has increased since 1992, the overall use of these fuels relative to total petroleum consumption remains relatively small. In 1992, replacement fuels accounted for slightly less than 2 percent of total motor fuel consumption; by 2001, replacement fuels accounted for less than 3 percent. *See Transportation Fuels 2000* at Table 10. Thus, to date, very little progress has been made toward achieving the aggressive goals established by EPCA and little progress will be made in the future without major new initiatives.

At the same time, DOE takes note of the fact that Congress is widely expected to take up comprehensive legislation that may significantly affect our nation's energy future and may bear importantly not only on the achievability of the current goals but also on what any potential revised goals might be. Moreover, the President and DOE have proposed bold initiatives to dramatically increase the availability, use and commercial viability of replacement fuels in the transportation sector. DOE's primary efforts are focused on the long-term goal of developing the technology and infrastructure to allow hydrogen to become a key motor vehicle fuel. These efforts, if fully supported with necessary enabling legislation and funding as DOE has proposed, offer the potential to achieve the long term goal of replacing petroleum as the primary transportation fuel.

In light of the momentum that these various efforts are engendering; in light of what DOE understands to be the principal purpose of EPCA's replacement goals in section 502(b)(2)—to encourage policymakers, industry and the public to engage in aggressive action to expand the use of alternative and replacement fuels; and in light of the likelihood of consideration and enactment of new legislation by this Congress that would have significant bearing on these issues, DOE has concluded that it should not make a determination under EPCA concerning the achievability of the 2010 goals at this time. Therefore DOE is not at this

time proposing to change the 2010 replacement fuel goal set forth in EPCA section 502(b)(2). DOE will continue to evaluate this issue and may in the future, if it considers appropriate, review and modify the 2010 replacement fuel goal pursuant to its authority in EPCA Title V.

#### V. Opportunity for Public Comment

##### A. Participation in Rulemaking

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments with respect to the subject set forth in this notice and the proposals made by DOE. DOE encourages the maximum level of public participation possible in this proceeding. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, States or other government entities, and others are urged to submit written comments on the proposal. DOE also encourages interested persons to participate in the public hearing announced at the beginning of this notice. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

##### B. Written Comment Procedures

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Alternative Fuel Transportation Program: Private and Local Government Fleet Determination, NOPR, Docket Number EE-RM-FCVT-03-001" and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit written comments and cannot provide eight copies, alternative arrangements can be made in advance by calling Mr. Dana O'Hara at (202) 586-9171. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. Electronic copies should be e-mailed to [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov). DOE is currently using Corel WordPerfect or Microsoft Word.

All comments received on or before the date specified at the beginning of this notice of proposed rulemaking and other relevant information will be considered by DOE before final action is taken on the proposal. All comments submitted will be made available in the electronic docket set up for this rulemaking. This docket will be available on the World Wide Web at the following address—[http://www.ott.doe.gov/epact/private\\_fleets.shtml](http://www.ott.doe.gov/epact/private_fleets.shtml). Pursuant to the provisions of 10 CFR 1004.1, anyone



submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as seven (7) copies, if possible, from which the information has been deleted. DOE will make a determination as to the confidentiality of the information and treat it accordingly.

### C. Public Hearing Procedures

The time and place of the public hearing are set forth at the beginning of this notice. DOE invites any person who has an interest in this proceeding, or who is a representative of a group or class of persons that has an interest, to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and should be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where he or she may be reached during the day. Each person selected to speak at the public hearing will be notified as to the approximate time that he or she will be speaking. A person wishing to speak should bring ten copies of his or her statement to the hearing. In the event any person wishing to speak at the hearing cannot meet this requirement, alternative arrangements can be made in advance by calling Mr. Dana O'Hara, at (202) 586-9171.

DOE reserves the right to select persons to be heard at the hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act. (42 U.S.C. 7191). At the conclusion of all initial oral statements, each person may, if time allows, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing

will be announced by the Presiding Officer at the hearing.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. The hearing may be canceled in the event no public testimony has been scheduled in advance.

### VI. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive Agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. Executive Order 12988 does not apply to this rulemaking notice because DOE is not proposing any regulations and instead is proposing to determine that regulations are not "necessary" under section 507(e) and (g) of EPCA.

### VII. Review Under Executive Order 12866

This proposed regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review. See 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). A draft of

today's action and any other documents submitted to OIRA for review are a part of the rulemaking record and are available for public review as provided in the **ADDRESSES** section of this notice of proposed rulemaking.

### VIII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96-354, 5 U.S.C. 601-612, requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. The proposed negative determination under EPCA section 507(e) would not result in compliance costs on small entities. Therefore, DOE certifies that today's proposed determination will not have a significant economic impact on a substantial number of small entities, and accordingly, no initial regulatory flexibility analysis has been prepared.

### IX. Review Under the Paperwork Reduction Act

Because DOE has proposed not to promulgate requirements for private and local government fleets, no new record keeping requirements, subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, would be imposed by today's regulatory action.

### X. Review Under the National Environmental Policy Act

The proposed rule would determine that a regulatory requirement for the owners and operators of certain private and local government light-duty vehicle fleets to acquire alternative fueled vehicles would make no appreciable contribution to actual achievement of the replacement fuel goal in EPCA or a revised goal, and therefore is not "necessary" under EPCA section 507(e). The "to its achievement. The negative determination regarding the necessity for a fleet requirement program would not require any government entity or any member of the public to act or to refrain from acting. Accordingly, DOE has determined that its proposed determination is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being interpreted or amended.

### XI. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), imposes

certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed determination and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

## **XII. Review of Impact on State Governments—Economic Impact on States**

Section 1(b)(9) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), established the following principle for agencies to follow in rulemakings: "Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions."

Because DOE is proposing to determine that a private and local government fleet AFV program is not "necessary" under section 507(e) and therefore is not proposing the promulgation of such a program, no significant impacts upon State and local governments are anticipated. The position of State fleets currently covered under the existing EPCA fleet program is unchanged by this action. Before reaching these conclusions, DOE sought and considered the views of State and local officials. DOE's efforts in this regard are discussed above in the portion of this **SUPPLEMENTARY INFORMATION** describing the workshops

DOE conducted on various options for implementing a fleet program.

## **XIII. Review of Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires each Federal agency to assess the effects of Federal regulatory actions on State, local and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published in the **Federal Register** a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). The notice of proposed rulemaking published today does not propose or contain any Federal mandate, so the requirements of the Unfunded Mandates Reform Act do not apply.

## **XIV. Review of Treasury and General Government Appropriations Act, 1999**

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's notice of proposed rulemaking and proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

## **XV. Review of Treasury and General Government Appropriations Act, 2001**

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

## **XVI. Review Under Executive Order 13175**

Under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), 65 FR 67249 (November 9, 2000), DOE is required to consult with Indian tribal officials in development of regulatory policies that have tribal implications. Today's notice and proposed determination would not have such implications. Accordingly, Executive Order 13175 does not apply to this notice and proposed determination.

## **XVII. Review Under Executive Order 13045**

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), 62 FR 19885 (April 23, 1997) contains special requirements that apply to certain rulemakings that are economically significant under Executive Order 12866. Today's action is not economically significant. Accordingly, Executive Order 13045 does not apply to this rulemaking.

## **XVIII. Review Under Executive Order 13211**

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. A determination that a private and local government fleet AFV acquisition program is not "necessary" under EPCA section 507(e) does not require private and local government fleets, suppliers of energy, or distributors of energy to do or to refrain from doing anything. Thus, although today's proposed negative determination is a significant regulatory action, if finalized the determination will not have a significant adverse impact on the supply, distribution, or use of energy. Consequently, DOE has concluded there is no need for a Statement of Energy Effects.

Issued in Washington, DC, on February 26, 2003.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 03-4991 Filed 3-3-03; 8:45 am]

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##### **TRANSPORTATION DEPARTMENT**

###### **Federal Aviation Administration**

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##### **TRANSPORTATION DEPARTMENT**

###### **Federal Aviation Administration**

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##### **TRANSPORTATION DEPARTMENT**

###### **Federal Aviation Administration**

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##### **TRANSPORTATION DEPARTMENT**

###### **Federal Aviation Administration**

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##### **TRANSPORTATION DEPARTMENT**

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**LIST OF PUBLIC LAWS**


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This is a continuing list of public bills from the current session of Congress which

have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

**S. 141/P.L. 108-8**

To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other

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**Last List February 24, 2003**

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